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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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State of Minnesota,  
  
                                Plaintiff,  
  
                                vs.  
  
Roxanne Marie Price,  
  
                                Defendant.

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TRANSCRIPT OF PROCEEDINGS

D.C. File 97098217

C.A. File 97-5296

VOLUME III

\* \* \* \* \*

A P P E A R A N C E S:

PETER A. CAHILL, Esq., Assistant Hennepin  
County Attorney, appeared on behalf of the State.

ALAN JAMES SHEPPARD, Esq., appeared on behalf  
of the Defendant.

DEFENDANT personally appeared.

TERRANCE M. NAGLE, Court Reporter.

\* \* \* \* \*

97098217

1 Monday morning session

2 September 28, 1998

3 - - -

4 THE COURT: We are on the record on the State  
5 v. Price matter outside the presence of the jury.

6 We have gone over the jury instructions. The  
7 State has requested an additional definition to the  
8 instructions on the crimes. It's my understanding  
9 that Mr. Sheppard does not object to that addition.  
10 He would like it in a different order, have  
11 negligence defined before gross negligence, is that  
12 correct, Mr. Sheppard?

13 MR. SHEPPARD: Yes, Your Honor.

14 THE COURT: And, Mr. Cahill, your position on  
15 that?

16 MR. CAHILL: Your Honor, I would like to keep  
17 it as submitted, simply because it defines grossly  
18 negligent immediately after using the term; however,  
19 I'm not wildly opposed to any change. As long as  
20 it's defined, it's not a matter of great importance.

21 THE COURT: All right. We will change the  
22 jury instruction and have negligence first and  
23 grossly negligent second. And is it acceptable to  
24 the attorneys that the jury receives one copy of the  
25 jury instructions? Mr. Sheppard.

1 MR. SHEPPARD: Yes, Your Honor. We would  
2 have no objection to that.

3 THE COURT: Mr. Cahill.

4 MR. CAHILL: Yes, Your Honor. That's fine.

5 THE COURT: All right. I want to put on the  
6 record, apparently your client will not be  
7 testifying, Mr. Sheppard, and I want to put her  
8 waiver of her right to testify on the record at this  
9 time.

10 MR. SHEPPARD: Very well.

11 THE COURT: All right. Ms. Price, you  
12 understand that you have an absolute right to testify  
13 in this case?

14 THE DEFENDANT: Yes.

15 THE COURT: And in discussions with your  
16 attorney has it been your choice then to choose not  
17 to testify?

18 THE DEFENDANT: Yes.

19 THE COURT: And, Mr. Sheppard, did you want  
20 the jury instruction in regards to the defendant not  
21 testifying in the case?

22 MR. SHEPPARD: Yes, we do, Your Honor. And  
23 in the ones I have received, it's in there. We would  
24 prefer to keep it there.

25 THE COURT: All right. It's also my

1 understanding, Mr. Sheppard, that you are agreeable  
2 to not sequestering the jury during their  
3 deliberations.

4 MR. SHEPPARD: That's correct, Your Honor.

5 THE COURT: All right. And, Mr. Cahill, did  
6 you want to note anything in that regard?

7 MR. CAHILL: No, Your Honor.

8 THE COURT: All right. Then we are ready to  
9 start. And we will get the jury in.

10 (The following record was made in open court  
11 in the presence of the jury.)

12 THE COURT: Please be seated and good  
13 morning. Mr. Sheppard.

14 MR. SHEPPARD: Your Honor, I would call David  
15 Daubert to the stand.

16 THE COURT: Sir, if you could step up to the  
17 clerk and raise your right hand.

18 - - -

19 DAVID DAUBERT

20 being first duly sworn, testified as follows:

21 THE COURT: If you could take a seat next to  
22 the court reporter, please.

23 And for the record, if you could please state  
24 your full name, spelling your first, middle and last  
25 name.

1 THE WITNESS: David B. Daubert, D-A-V-I-D,  
2 B., as in boy, D-A-U-B-E-R-T.

3 THE COURT: Thank you very much.

4 Mr. Sheppard.

5 MR. SHEPPARD: Thank you, Your Honor.

6 - - -

7 DIRECT EXAMINATION

8 BY MR. SHEPPARD:

9 Q. Mr. Daubert, would you indicate what type of work you  
10 customarily do.

11 A. I'm an engineer. I specialize in reconstructing  
12 motor vehicle accidents.

13 Q. And how long have you been doing that?

14 A. I've been working in accident investigation and  
15 reconstruction since 1970. As an engineer I've been  
16 working in accident reconstruction since 1985.

17 Q. And could you tell me your educational background,  
18 please, sir.

19 A. I have a bachelor of science from the State  
20 University of New York in Syracuse, New York, which I  
21 received in 1967. I went back to school in 1975 and  
22 received a master's of arts in public administration.  
23 Went back to school in 1978 and received an  
24 engineering degree, a master of science in traffic  
25 and transportation engineering from the University of

1 Colorado. I've been working towards a doctorate in  
2 civil engineering since 1991, and I am almost  
3 finished with that.

4 Q. Okay. And how about your employment background,  
5 would you indicate your employment background that's  
6 significant towards engineering, at least, or traffic  
7 safety.

8 A. After college, I went into the military. Came out of  
9 the military in 1970, joined the Denver police  
10 department as an accident investigator. Spent three  
11 years with the City and County of Denver working the  
12 evening peak hour investigating accidents.

13 In 1973, I joined a new police department  
14 that was looking for an accident investigator, a  
15 suburb of Denver. I spent five years with that  
16 police department, first as an accident investigator  
17 then as an accident reconstructionist for that  
18 department.

19 1978, I left the police department and went  
20 to work under contract with the State of Colorado  
21 Division of Highway Safety as their reconstruction-  
22 ist. Spent five years in that position.

23 1983, I took a position as the branch manager  
24 for a traffic engineering firm in Colorado Springs,  
25 Colorado doing traffic safety studies for cities and

1           counties. I stayed in Colorado Springs until 1987.  
2           Came to Minnesota in 1987 and joined what we in the  
3           business describe as a forensic engineering firm, a  
4           firm that specializes in looking at things that fail,  
5           buildings, fires, explosions or accidents. And my  
6           specialty is accident reconstruction, and I've been  
7           in Minnesota since 1987, first with a firm in  
8           Minnetonka and then now with a firm in Hopkins.

9    Q.       Do you belong to any organizations that would have  
10           significance towards forensic engineering?

11   A.       Yes, sir, I do.

12   Q.       And could you go through them as well, please.

13   A.       Probably the organization I work with the most is the  
14           Society of Automotive Engineers. Not only do the  
15           automotive engineers build cars, but they want to  
16           know what happens to them when they crash.

17                   The other organization I work with is the  
18           Institute of Transportation Engineers; traffic  
19           safety, working with the vehicle/roadway interface,  
20           what causes crashes.

21                   I work with the National Academy of Forensic  
22           Engineers Transportation Research Board. There's  
23           half a dozen others. American Academy of Civil  
24           Engineers.

25   Q.       Have you ever published or spoken at seminars

1 concerning traffic accident reconstruction?

2 A. Yes, sir.

3 Q. And could you indicate briefly how often and how wide  
4 of an area you may have covered?

5 A. When I was a police officer, I was one of the people  
6 that instructed at the Colorado Law Enforcement  
7 Academy in accident reconstruction. Since then, I've  
8 talked at various legal seminars on accident  
9 reconstruction, made a number of presentations at the  
10 Society of Automotive Engineers on accident  
11 reconstruction, particularly to do with the roadway,  
12 how the roadway can cause or influence an accident;  
13 made presentations at the Transportation Research  
14 Board on accident reconstruction, again the roadway,  
15 how does it affect causing accidents. That's been my  
16 area of specialty is that vehicle-roadway interface,  
17 what causes the accident.

18 Q. Sir, on October 2nd of '97 an accident occurred at  
19 the intersection of County Road 30 and 14, sometimes  
20 known as Zane Road and 93rd Avenue. Have you been to  
21 that intersection?

22 A. Yes, sir, I have.

23 Q. And did you review the report prepared by Trooper  
24 Walerius from the Minnesota Highway -- or with the  
25 Minnesota State Patrol, I believe he is.



1 A. Yes, sir, I did.

2 Q. And would you agree that his reconstruction is  
3 accurate as to math, for example?

4 A. Yes, sir.

5 Q. So there is like no smoking gun, so to speak, no  
6 glaring defect in his report?

7 A. No, sir. I didn't see anything.

8 Q. Okay. We have had some discussion, for example,  
9 about load factors and how you take a skid loader out  
10 and drag it over the surface. That seems  
11 appropriate?

12 A. Well, it was ten years ago. We don't do that  
13 anymore. There are some organizations that are still  
14 doing that, but we all have standards in our  
15 industry, and using that drag sled has been dropped  
16 as a standard a number of years ago. There are still  
17 people doing it.

18 Q. Okay. You understand that essentially the  
19 defendant's vehicle was traveling eastbound on County  
20 30 and the victim's car was going north on 14 and  
21 there was what's been referred to as a T-bone  
22 accident, is that correct?

23 A. Yes, sir.

24 Q. And in reviewing that intersection, were you able to  
25 obtain records concerning that intersection?

1 A. Yes, sir, I was.

2 Q. And do some of those records rank intersections  
3 throughout Hennepin County?

4 A. Yes, sir.

5 Q. And what would the ranking of this intersection be?

6 MR. CAHILL: Object. Irrelevant.

7 THE COURT: Could the attorneys approach,  
8 please.

9 (Discussion was held at the bench off the  
10 record.)

11 THE COURT: The objection is sustained.

12 BY MR. SHEPPARD:

13 Q. Sir, when you went out to look at the intersection,  
14 did you happen to notice if there was a variety of  
15 utility poles along the south and north edge of  
16 County Road 30?

17 A. Yes, sir.

18 Q. Are there points for a vehicle traveling east, back  
19 from that intersection, where those poles cause any  
20 traffic clutter?

21 A. Yes, sir.

22 Q. Could you indicate what that is?

23 A. It relates to the signals at the intersection. There  
24 are three heads or signal indications facing  
25 eastbound traffic. Two are what are called

1 pole-mounted. That is, they are on the poles on the  
2 corners, or they are sometimes called post-mounted or  
3 corner-mounted. Then there's one overhead signal.

4 There are positions as you approach going  
5 eastbound where the line of utility poles blocks one  
6 or both of the pole or corner-mounted signals at any  
7 one time.

8 Q. Would you step down and take a look at Exhibit 3  
9 that's mounted on Exhibit 2.

10 THE WITNESS: May I?

11 THE COURT: Yes.

12 THE WITNESS: You never know when you are  
13 going to get yelled at.

14 THE COURT: And, Mr. Daubert, if you could  
15 stand on the other side of the graph and face the  
16 jury. Thank you.

17 BY MR. SHEPPARD:

18 Q. Exhibit 3 is the one on the left portion.

19 A. (The witness indicated.)

20 Q. Yes. On that exhibit there are some faint red  
21 lights. Have you reviewed those?

22 A. Yes, sir.

23 Q. And does it appear as if the right red light is  
24 blocked in that picture?

25 A. Yes, sir. There is a utility pole blocking that

1 right corner-mounted or post-mounted signal.

2 Q. Okay. Is there anything else about Exhibit 3 that  
3 strikes you?

4 A. Yes, sir. Same thing that I see today out there:  
5 there are lots of truck skid marks in advance of the  
6 intersection.

7 Q. What does that indicate to you?

8 A. It's an indication of the health of the intersection;  
9 that you don't see skid marks like that approaching  
10 an intersection, particularly that many, unless there  
11 is some problem in the intersection. That's one of  
12 those things, the key things that you look at when  
13 you go to an intersection from a traffic safety  
14 standpoint: what does the intersection look like,  
15 what little clues give you indications that it's not  
16 quite operating correctly.

17 Q. You could return to the witness chair at this point  
18 then.

19 Sir, were you able to check the timing of the  
20 lights at this intersection?

21 A. Yes, sir, I was.

22 Q. Did you do that both personally and a review of  
23 public records?

24 A. Yes, sir, I did.

25 Q. And could you go through the stages of a light, the

1 green, the yellow and the red, and indicate how they  
2 are triggered, how long they take?

3 A. Yes, sir. This is what's called a two-phase  
4 operation. You can have up to eight phases at an  
5 intersection. If you had the opposing traffic having  
6 different lights, the left turners having different  
7 lights, and you changed the other direction and the  
8 opposing traffic having different lights and the left  
9 turners having different lights. So there's eight  
10 possible phases to a traffic signal.

11 In this case, only two of those are being  
12 used. So that when the lights come on for east and  
13 west, that is one phase. Then those lights go off  
14 and the lights go on for north and south. That's the  
15 second phase. There's no separate turn signals at  
16 this intersection. So for traffic going eastbound,  
17 for example, the light would come on green and stay  
18 on for 10 seconds. That clears out the initial car  
19 that's sitting there. Now, if more cars arrive, the  
20 light will stay green up to 35 seconds. Nobody shows  
21 up, you don't need that extra green time, so you  
22 don't use it.

23 At sometime between 10 and 35 seconds, the  
24 light says, (a) there's no more cars, I'm gonna  
25 change and let the other direction go. So the light

1 then changes to yellow for east and westbound  
2 traffic. There's a five second yellow. Then there's  
3 something that we call a clearance cycle, there's a  
4 one second all red. So that if you stood there and  
5 looked up at the light, you would see that they were  
6 red all the way around for one second. Then the  
7 light goes green for north and south on Zane and we  
8 go through that same procedure, 10 seconds minimum to  
9 get that first car out of there. If there aren't any  
10 more cars, the light would change again, or if there  
11 were more cars, it would again stay green for another  
12 35 seconds for north and south. We would get another  
13 five seconds yellow, one second all red and then we  
14 go back to east and west on County Road 30. And it  
15 repeats through that cycle.

16 This is an intersection that's called  
17 actuated. Sometimes you see on the ground there are  
18 loops or there is a saw cut in the ground and that's  
19 a loop. As a car arrives and sits over that loop, it  
20 tells the signal there's a car here, give me the next  
21 light. And that's the way this intersection is set  
22 up, with those detectors in the ground. That's what  
23 determines whether it stays green for 10 seconds or  
24 35 seconds. But it's a simple, two-phase light.

25 The length of the yellow, that five second

1 yellow, is determined by the speed limit. It's  
2 generally, when you work through the formula, it  
3 comes out to be one second of yellow for every 10  
4 miles per hour of the speed limit. But,  
5 unfortunately, just because of the way the system  
6 works, the signals are set for passenger cars.  
7 They're designed for passenger cars, not for any  
8 other kind of vehicle; for example, trucks. They are  
9 not designed for trucks, they are designed for the  
10 passenger car.

11 So there's always some problems, particularly  
12 as your truck traffic increases. And one of those  
13 problems is manifested by those skid marks on the  
14 pavement. That's an indication there is a lot of  
15 trucks and they are having trouble because the lights  
16 are set for passenger cars.

17 Q. Now, just so I make sure, you indicated that the all  
18 red clearance where it's red for all four directions  
19 of travel, at least on this intersection, that is  
20 referred to as all red clearance time, is that  
21 correct?

22 A. Yes.

23 Q. And for this intersection, that is one second?

24 A. Yes, sir.

25 Q. Is that both by your personal observation and by

1 public record?

2 A. It's what's in the signal diagram in the box. It's  
3 the phasing diagram.

4 Q. So looking at Exhibit 35, if there was an indication  
5 that the all red clearance was approximately a second  
6 and a half to two seconds, would that be a factual  
7 error?

8 A. Yes, sir. There is a sheet called "Timing For  
9 Intersection," and it's got some green lights across  
10 it. So if you don't read very carefully, there is a  
11 line that's very dark because of the copying that  
12 says "Red Clearance" that says one second.  
13 Underneath that, there is another line that says "Red  
14 Revert," which is a different concept, and that's two  
15 seconds. You have to read carefully that it is only  
16 one second on the sheet.

17 Q. You are absolutely positive that this intersection  
18 red clearance is one second, not a second and a half  
19 to two seconds?

20 A. Absolutely.

21 Q. In your job as an accident reconstructionist, are  
22 there certain tests done of human reaction time and  
23 perception time?

24 A. Yes, sir.

25 Q. And if there was an indication that reaction time,



1 standard reaction time, was one second, do you know  
2 when that standard came into effect?

3 A. Yes, sir, I do.

4 Q. And when was that?

5 A. Came into effect from some laboratory studies that  
6 were done in 1937. People were put into a chair,  
7 such as I am sitting here, and handed a button and  
8 told, "Now, the light's gonna change from green to  
9 red, and when it does, push the button." And there's  
10 a sentence on the bottom of it in big bold type that  
11 says, "Don't use this in the field. It is for  
12 laboratory use only." But it has become generally  
13 used in the field, in the past it has been.

14 Q. And what percentage of the people would have a one --  
15 if you know, a one-second reaction perception time?

16 MR. CAHILL: Object. Foundation.

17 THE COURT: Sustained.

18 BY MR. SHEPPARD:

19 Q. Are you aware from that standard -- have you reviewed  
20 the tests that were done to come up with that  
21 standard?

22 A. There have been a number of tests done and --

23 MR. CAHILL: Object as nonresponsive.

24 THE COURT: Overruled.

25 THE WITNESS: The Society of Automotive

- 1 Engineers has sponsored a number of tests, as well as  
2 the Transportation Research Board. Because  
3 perception reaction time is such a vital part of  
4 designing the roadway system, that has been studied  
5 extensively so we know what the normal perception  
6 reaction time is. And there's a chart that shows  
7 what one second is, what the normal is, where we  
8 design for to make sure we get most of the people.
- 9 Q. And is one second what most of the people take for  
10 reaction perception time?
- 11 A. No, sir. It's actually only five percent of the  
12 people that are driving on the roadway have a  
13 one-second perception reaction time.
- 14 Q. If I remember my statistics right, we talk about mean  
15 and some of those. Could you go through those in  
16 terms of reaction time?
- 17 A. Normal perception reaction time or the mean in this  
18 curve of five percent is one second, 50 percent is  
19 1.6 seconds, and 85 percent is 2.5 seconds. So,  
20 generally, we design for the 2.5 seconds to make sure  
21 we catch most people.
- 22 Q. Okay. And you are indicating this is a curve. Is  
23 this like a standard bell curve?
- 24 A. It's not the normal distribution curve, the  
25 bell-shaped curve. It's actually an asymptotic.

1 Q. Okay.

2 A. It looks like a big S.

3 Q. Okay. But 95 percent -- up to 95 percent of the  
4 people at that point, it would be 2.5 seconds for  
5 reaction time?

6 A. 85 percent are at 2.5. There are still people that,  
7 just because of their physical makeup, can't perceive  
8 of and react to something in 2.5 seconds, but 85  
9 percent of the people -- we have got to pick some  
10 number to design for. We can't get everybody because  
11 some studies show that some people take up to eight  
12 seconds to perceive and react. You can't get  
13 everybody.

14 Q. Now is -- excuse me. Does perception reaction time  
15 vary according to lighting conditions?

16 A. It does.

17 Q. And could you explain that.

18 A. It takes longer at night to perceive and react to  
19 something than it does during the daytime.  
20 Primarily, it's a recognition factor.

21 There are four steps to perception reaction.  
22 One, you have to see it. If you never see it, you  
23 never react to it. The second thing is you have to  
24 figure out what it is. The problem at night is it's  
25 more difficult sometimes to figure out what it is,

1 where is it, how far away am I, does it affect me?  
2 Is it something that's down the road that's not for  
3 me? Sometimes you're looking at a size and shape of  
4 something on the roadway and trying to figure out,  
5 what is it? Once you figure out what it is, then you  
6 have to decide, what am I going to do about it? Is  
7 it something that's going to affect me? Then you do  
8 your reaction.

9 That time tends to spread out at night.  
10 Normal perception reaction time at night is two and a  
11 half seconds, whereas in the daytime 1.6 is more  
12 normal.

13 Q. Now, in reviewing the trooper's reconstruction of  
14 this situation, this accident, the times we are  
15 talking about become crucial in terms of perceiving  
16 the changing of the lights, is that correct?

17 A. It does. It's also the normal function of the light.  
18 How does it work? What do we do as we approach a  
19 light? How do people behave when they approach a  
20 light?

21 Q. And that's different for passenger cars than trucks?

22 A. It is.

23 Q. And if we have a one-second red all clearance and a  
24 five second yellow, at a posted speed of 50 miles an  
25 hour, can you calculate back how far a passenger

1 vehicle would be or any vehicle would be, prior to  
2 when the light first turns yellow?

3 A. Yes, sir.

4 Q. And you also then would have standards, would you  
5 not, for braking time for different vehicles?

6 A. Yes, sir.

7 Q. And what variables are involved in the braking time  
8 for a passenger car as compared to a truck?

9 A. The main difference is that trucks take about 50  
10 percent longer to stop than a passenger car. It has  
11 to do with a lot of different things. One is the  
12 tires are different. You have a very hard tire which  
13 doesn't make it easy to get friction with the  
14 roadway. You don't have as big a brake system. If  
15 you look at the brake shoes on a car and then you  
16 look at the brake shoes on a truck, there is -- you  
17 look at the weight between the two vehicles, you'd  
18 need brake shoes on the truck about eight times  
19 larger than they are to equal what a car has. So it  
20 doesn't have the braking ability. You are also  
21 talking about weight. Takes a lot of distance and  
22 time to stop a truck.

23 Q. Okay. And in reviewing Trooper Walerius's  
24 reconstruction, a calculation was made assuming the  
25 victim's vehicle went out 44 feet, is that correct?

- 1 A. Yes, sir. That's a good approximation.
- 2 Q. And is there an assumption involved in calculating  
3 how much time it would have taken that vehicle to  
4 travel 44 feet?
- 5 A. Yes, sir.
- 6 Q. And what is that assumption?
- 7 A. That the vehicle started from a dead stop.
- 8 Q. And could you explain the law of inertia and why  
9 that's so important in this situation?
- 10 A. I can give an example. To go from zero up to the  
11 area of the impact in that 44 feet takes four  
12 seconds. And a lot of that or most of that is used  
13 in getting the car started, getting it moving. For  
14 example, if the car went through, rolled through at  
15 10 miles an hour, it would only take two seconds to  
16 get to the area of impact, and the faster the car is  
17 going when the light turns green, the shorter the  
18 time it takes to get to the area of impact.
- 19 Q. So this diagram then is based on the assumption that  
20 the victim's vehicle is at a full stop and then  
21 indicating a distance back that the truck would have  
22 had the red light, is that correct?
- 23 A. Yes, sir.
- 24 Q. And if that assumption is incorrect that the vehicle  
25 was at a full stop, then the calculation of the

- 1 distance back is also at fault, is that correct?
- 2 A. Yes, sir.
- 3 Q. Now, were you also aware that there were some alleged  
4 deficiencies on the truck?
- 5 A. Yes, sir, I was.
- 6 Q. And some of those deficiencies were not contributing  
7 causes to this accident. Would that be fair?
- 8 A. I couldn't find any of the deficiencies that were a  
9 contributing cause to the accident. They were there,  
10 but they weren't -- didn't contribute to the  
11 accident.
- 12 Q. Now, some things just don't matter, is that correct?
- 13 A. Yes, sir.
- 14 Q. Whether or not the city that the truck is from is  
15 stenciled on the side of the door, that's one of the  
16 deficiencies in this truck, but it doesn't matter in  
17 how this accident happened. Would that be fair?
- 18 A. Yes, sir.
- 19 Q. And also, the inoperative defroster, that didn't  
20 cause this accident, did it?
- 21 A. No, sir.
- 22 Q. And one of the high beams was not functioning; that  
23 didn't cause this accident, did it?
- 24 A. No, sir. And there was even an indication by the  
25 trooper that it could have been caused in the

- 1 accident.
- 2 Q. And taillights on the truck that would have only been  
3 visible to vehicles behind the truck to the west of  
4 the truck, they didn't cause this accident, did they?
- 5 A. No, sir.
- 6 Q. And then the air brakes, are you familiar with the  
7 operation of air brakes, how they work?
- 8 A. Yes, sir.
- 9 Q. The standards for air brakes?
- 10 A. Yes, sir. I'm a certified commercial vehicle  
11 inspector.
- 12 Q. And did the alleged deficiencies in the air brakes  
13 contribute to this accident?
- 14 A. No, sir.
- 15 Q. Had the air brakes failed entirely on this vehicle  
16 some distance back and it had rolled into the  
17 intersection without the driver being able to stop  
18 the vehicle, then it would have been a contributing  
19 factor, is that correct?
- 20 A. Yes, sir.
- 21 Q. And likewise, there was a clevis pin missing on one  
22 of the axles for the brakes that rendered that axle,  
23 that side of the axle's brakes inoperative, is that  
24 correct?
- 25 A. Yes, sir.



- 1 Q. So this vehicle had 11 out of 12 of the axles'  
2 brakes, two on each side, working?
- 3 A. Actually, I think it had seven axles, which would  
4 have been 14.
- 5 Q. Okay.
- 6 A. So we are one out of 14.
- 7 Q. All right. And the conditions of the brakes, is  
8 there some standard to determine if that's  
9 significantly out of compliance?
- 10 A. There is.
- 11 Q. And I would take it the one side of the axle on the  
12 one set of brakes was beyond that standard, is that  
13 correct?
- 14 A. Well, the one with the clevis pin, obviously, that  
15 could not work. The brake travels -- there is a  
16 chamber, an air chamber. It has a rod out the back,  
17 and that chamber pushes that rod. There has to be  
18 some point where if the travel of that rod is too  
19 far, you have to go readjust it. And by standard,  
20 once it reaches two inches of travel, then it has to  
21 be readjusted. But it doesn't mean that if it's at  
22 two and a quarter inches it's not fully functional,  
23 it just means at some point we have got to establish  
24 a standard to go back in and readjust it. One of the  
25 brakes was at two inches. Worked fine, 100 percent

1 efficiency, but it's at the point where you need to  
2 go back it up again and start it over again.

3 One of the brakes was at two and a half  
4 inches. Still doesn't mean it wasn't functioning at  
5 100 percent, it just means that it's time to readjust  
6 it so that you can start over again in the travel of  
7 this rod. All of the others were well within the  
8 allowable limits.

9 Q. Now, is this something a driver can do by themselves?

10 A. No, sir.

11 Q. And why would that be?

12 A. In order to check the travel, you need to go down and  
13 measure how long this rod is. Then you need to go  
14 step on the brake pedal and go back underneath and  
15 measure how long the rod is. The problem always with  
16 drivers is that you can't step on the brake pedal and  
17 be underneath measuring the rod at the same time.  
18 You have to have somebody else assist you.

19 Typically, it's done at the next level of maintenance  
20 in the shop where there's a mechanic and there are  
21 two mechanics, one stepping on the brake pedal, one's  
22 underneath measuring. The driver can't measure brake  
23 travel by themselves.

24 THE COURT: Mr. Sheppard, could you put that  
25 up so I could see?

1 MR. SHEPPARD: Oh. Certainly, Your Honor. I  
2 was trying to get all three of them out at once.

3 THE COURT: Oh.

4 MR. SHEPPARD: But I'll go through them one  
5 at a time.

6 BY MR. SHEPPARD:

7 Q. Were you aware of certain requirements by the federal  
8 regulations placed upon commercial drivers?

9 A. Yes, sir.

10 Q. And does that appear to be one such of those  
11 requirements?

12 A. Yes, sir.

13 Q. And looking at the component parts, were any of those  
14 component parts in this accident a contributing cause  
15 to the accident?

16 A. No, sir. They were not.

17 Q. And are some of those items on there things that a  
18 driver would have to have assistance in order to  
19 check on them?

20 A. There's only one, and that's the brakes.

21 Q. And in order to do a brake inspection, first of all,  
22 a driver could go around and visually look at the  
23 brake components to see if they are all there, is  
24 that correct?

25 A. Yes, sir.

1 Q. And there's no doubt in this situation that had the  
2 clevis pin been noticed at the commencement of the  
3 defendant's driving this route or her time with this  
4 truck, that that is something that a driver should be  
5 checking for?

6 A. Sure. If it didn't fall out sometime during the day.

7 Q. And other than that, the adjustment of the brake,  
8 that is something that ordinarily a driver could not  
9 do by themselves at the commencement of their shift?

10 A. That's correct.

11 Q. And is the same true of that regulation (indicating),  
12 that the components indicated on there were not a  
13 contributing factor to this accident?

14 A. I agree.

15 Q. And would that also be true of that regulation  
16 (indicating)?

17 A. Yes, sir.

18 Q. Sir, are you familiar with any studies that have  
19 checked a person's ability to determine speed of a  
20 vehicle?

21 A. Yes, sir.

22 Q. And if an individual was behind the victim's car  
23 somewhere, traveling north on 14 and saw the  
24 defendant's truck approaching from the person down  
25 here's left side, and they observed that truck for

1 approximately 150 feet, would that be a sufficient  
2 distance in which to gauge the speed of that vehicle.

3 MR. CAHILL: Object. Foundation.

4 THE COURT: Sustained.

5 BY MR. SHEPPARD:

6 Q. Would any of the tests for checking perception that  
7 you have reviewed cover that type of perception?

8 A. Yes, sir.

9 Q. And how would that be? What are we looking for  
10 there?

11 A. One of the most difficult tasks for a driver is to  
12 assess the speed of another vehicle. They can tell  
13 relative motion of it, is it going fast or slow, but  
14 to put a number on it, that has always been reported  
15 in the literature as one of the most difficult tasks  
16 for a driver.

17 Q. Is there any type of factor in determining how long  
18 you see the vehicle that would assist in that?

19 A. No. It's more that the observer can tell, is it  
20 going fast or is it going slow? And that's about all  
21 they can tell.

22 Q. Is it possible for an observer to tell if a  
23 commercial truck loaded to approximately 80,000  
24 pounds is accelerating or deaccelerating?

25 MR. CAHILL: Object. Foundation.

1 THE COURT: Sustained.

2 BY MR. SHEPPARD:

3 Q. Do any of the tests that you have been referring to  
4 have to deal with perception of acceleration or  
5 deacceleration?

6 A. Not that I can think of. They had to do with trucks,  
7 but not particularly with that aspect of it.

8 Q. Okay. If a vehicle is going 50 miles an hour, how  
9 many feet per second is it moving?

10 A. 73 feet a second.

11 Q. And with reaction time that you have been referring  
12 to at night, from the point of impact back, would you  
13 be able to calculate how many feet the defendant's  
14 truck had traveled in two and a half seconds?

15 A. Yes, sir.

16 Q. And what would that be?

17 A. 182 feet.

18 Q. And additionally, is it possible to determine how  
19 much distance it would take for a truck to stop at 50  
20 miles an hour, loaded to approximately 80,000 pounds?

21 A. Yes, sir.

22 Q. And in your opinion what would that distance be?

23 A. It depends if you want to skid the truck and put it  
24 in an uncontrolled attitude. From a safety  
25 standpoint, that's not particularly how I want trucks

1 to stop at an intersection. I want them to stop  
2 under a controlled condition. Trucks such as this  
3 would take anywhere from 489 to 628 feet to stop in a  
4 controlled condition.

5 Q. Okay. So the uncontrolled situation is if we, quote,  
6 lock up the brakes, is that what you are referring  
7 to?

8 A. Yes. You lose your steering, you lose your control.

9 Q. Slam 'em on so hard all the wheels lock up and just  
10 start smoking and skidding along?

11 A. Which is what the marks on the pavement indicate that  
12 has been happening at that intersection.

13 Q. Okay.

14 A. You can do that in a little under 300 feet.

15 Q. Okay. And this difference between the uncontrolled  
16 stop and a more controlled stop, does that affect  
17 when you are coming up to a yellow light a decision  
18 to make as to whether or not you have sufficient time  
19 to go through?

20 A. Yes, sir. There's a point where if you are  
21 approaching a light and it turns to yellow, I'm so  
22 close that I don't have any decision, I'm gonna go  
23 through because I can't get stopped. Then there's a  
24 point where, as I am approaching the intersection and  
25 the light turns to yellow, I'm far enough away that I

1           feel comfortable that I can get to a stop. And  
2           there's a -- there are two points. There's a "can  
3           stop" point and there is a point where it says "No, I  
4           can't stop." And in between those points is called  
5           the option zone. The driver has the option. I can  
6           stop if I really get on the brakes or I can go  
7           through without a problem.

8                         The problem always arises that the first car  
9           says, "Well, I better stop," and the second car says,  
10          "No, I don't think I'm going to," so you end up with  
11          a rear end collision. But there is this option zone.

12                        What happens with trucks is that the option  
13          zone becomes a dilemma zone. Driver takes -- truck  
14          driver takes so much longer to stop than the car that  
15          when the light turns yellow, the driver is caught in  
16          a dilemma: do I try to stop with this load on my  
17          vehicle or do I try to go through because it's gonna  
18          be difficult to stop? That dilemma zone is always  
19          the problem with the trucks, and that's why you have  
20          the skid marks on the pavement.

21                        MR. CAHILL: I object to that opinion as  
22          without foundation, Your Honor, and speculation.

23                        THE COURT: Overruled.

24 BY MR. SHEPPARD:

25 Q.           Were you able to determine in this situation for a



1 commercial truck loaded to 80,000, approximately  
2 80,000 pounds, how far back the truck's dilemma zone  
3 is?

4 A. Yes, sir.

5 Q. And what would that calculation be?

6 MR. CAHILL: Object. Irrelevant.

7 THE COURT: Overruled.

8 THE WITNESS: We take this point at -- if we  
9 take the six seconds, which is the five seconds plus  
10 the one second all red, and multiply that times the  
11 73, which is the feet per second you are traveling,  
12 that turns out to be 438 feet.

13 So if I'm going 50 miles an hour and I'm at  
14 438 feet from the intersection, the light will change  
15 to yellow, and I have my option of either stopping or  
16 going through. The truck takes anywhere up to 628  
17 feet to stop, or if it gets on the brakes a little  
18 harder, he can get it stopped in 489 feet or, if he  
19 skids, the truck just lays down all that rubber and  
20 smoke, it will stop in about 300 feet.

21 So at 438 feet is where the light changes to  
22 yellow, but as a truck driver I may be at 628 feet,  
23 knowing that it's gonna take me 628 feet to stop and  
24 I'm past where the light has turned yellow. So I  
25 have this dilemma. And we record that in the

1 literature and it is called a dilemma zone. Do I  
2 decide to go through or do I decide to stop?

3 And it makes a difference whether that  
4 vehicle on the side road is stopped dead and taking  
5 four seconds to get out there or going through at 10  
6 miles an hour and takes two seconds to get out there.  
7 I may be a lot closer and think I can get through the  
8 intersection when, in reality, those last two seconds  
9 I'm actually in on the red. And it's a dilemma.

10 We see about 15 percent of the drivers  
11 approaching --

12 MR. CAHILL: Object to the narrative, Your  
13 Honor.

14 THE COURT: Sustained.

15 BY MR. SHEPPARD:

16 Q. And your indication is on Exhibit 3, the skid marks  
17 that are noticeable on that photo, that's an example  
18 of trucks having this dilemma problem, is that  
19 correct?

20 A. Yes, sir.

21 Q. Were you able to discover any other evidence of that  
22 type of situation?

23 A. Well, I did look at the accident rate for the  
24 intersections in Hennepin County. I keep the books.  
25 They are published every year, so I keep the books on

1 intersection rates. So I know what the county-wide  
2 average is, and in talking to Hennepin County  
3 personnel, every county sets a critical level where  
4 if the accident rate gets above that, better do  
5 something. So I keep those books over the years.

6 And I looked at this intersection to see  
7 where it was on the rate of accidents. Rate is a  
8 thing where you take how many cars are going or  
9 trucks are going into the intersection, compared to  
10 the number of accidents.

11 Q. Is the rate for this intersection going up or down?

12 MR. CAHILL: Object as irrelevant.

13 THE COURT: Overruled.

14 THE WITNESS: Up dramatically.

15 BY MR. SHEPPARD:

16 Q. Is there a standard that traffic engineers would  
17 establish to decide whether or not the accident rate  
18 at an intersection is critical?

19 A. Yes, sir.

20 Q. And what is that standard?

21 A. The critical rate, accident rate, is 1.21 accidents  
22 per million vehicle miles entering the intersection.  
23 So it's the number of accidents per all the cars that  
24 enter the intersection in a year.

25 Q. And where is this intersection in comparison to that

1 critical rate?

2 A. The last -- take the years prior to the accident,  
3 '95, '96, '97. '95 was 1.27, so we are above that  
4 1.21; '96 was 1.38; '97, the year of this accident,  
5 was 1.48. So it's gone up pretty dramatically,  
6 particularly over the critical rate.

7 Q. So for '96 it was 1.48 and the established critical  
8 rate is 1.21?

9 A. For '97? It was 1.48.

10 MR. SHEPPARD: I have no more questions.

11 MR. CAHILL: May we approach, Your Honor?

12 THE COURT: Yes.

13 (Discussion was held at the bench off the  
14 record.)

15 MR. SHEPPARD: Your Honor, I have no further  
16 questions of this witness.

17 THE COURT: All right. Before we have  
18 cross-examination of Mr. Daubert, members of the  
19 jury, we are going to take a break, and it's going to  
20 be longer than usual. I have another matter I need  
21 to take care of. I would ask that you be in the room  
22 at 753 at 11:30. That means we may go a little bit  
23 past the lunch hour, so I want to let you know that,  
24 too. Please don't talk about the case among  
25 yourselves or with anyone else and that will give you

1 enough time to get some refreshments.

2 (The following record was made in open court  
3 out of the presence of the jury.)

4 MR. SHEPPARD: Your Honor, we would like to  
5 make one offer of proof for the one question that was  
6 sustained as to the ranking of this intersection.

7 THE COURT: All right.

8 MR. SHEPPARD: Mr. Daubert, if you could  
9 retake the chair for just a couple more minutes,  
10 please.

11 THE COURT: Well, there was an objection by  
12 the State to the question where Mr. Sheppard asked  
13 Mr. Daubert what the ranking of this intersection was  
14 in terms of accidents, I take it in Hennepin County,  
15 is that right?

16 MR. SHEPPARD: That's correct.

17 THE COURT: And that objection was made as  
18 irrelevant and it was sustained. What did you want  
19 to add, Mr. Sheppard?

20 MR. SHEPPARD: I just wanted to make an offer  
21 of proof for the record.

22 This is the 83rd worst intersection in  
23 Hennepin County, is it not?

24 THE WITNESS: Yes, sir. Out of 721.

25 THE COURT: All right. I don't need Mr.

1 Daubert to testify to the fact of what I have already  
2 found irrelevant. Did you have an argument in  
3 regards to why it would be relevant?

4 MR. SHEPPARD: No, Your Honor. I only wanted  
5 to make an offer of proof that his testimony would be  
6 that it was the 83rd worst intersection.

7 THE COURT: All right.

8 MR. SHEPPARD: The relevancy of that I think  
9 would be that he has indicated now that there is  
10 trouble with this intersection, that it's past the  
11 critical rate.

12 THE COURT: All right. 11:30. And have you  
13 given Mr. Cahill all the documents now, Mr. Sheppard,  
14 from Mr. Daubert?

15 MR. SHEPPARD: Your Honor, Mr. Daubert has  
16 thrown many things at me Friday afternoon. I think  
17 he's more than willing, I'm certainly willing, to let  
18 him indicate to Mr. Cahill if there is anything else  
19 that you have as far as documents

20 THE COURT: Mr. Sheppard, it is not Mr.  
21 Daubert, the witness' obligation to provide  
22 discovery, it is yours. And you obviously have not,  
23 by your own admission, not provided complete  
24 discovery. I will be back at 11:30 and I expect that  
25 to be done. And Mr. Cahill needs time over lunch to

1 look at new things. I am going to have to give it to  
2 him. And I cannot tell you how upset this makes me.

3 MR. SHEPPARD: Okay.

4 (A recess was taken.)

5 - - -

6 (There was no additional record made this  
7 morning and the proceedings were recessed until the  
8 afternoon session.)

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Monday afternoon session

September 28, 1998

- - -

(The following record was made in open court  
in the presence of the jury.)

THE COURT: Thank you. Please be seated and  
good afternoon. And, Mr. Daubert, you are still  
under oath.

Mr. Cahill.

MR. CAHILL: Thank you, Your Honor.

- - -

CROSS EXAMINATION

BY MR. CAHILL:

Q. Mr. Daubert, when you finished the direct examination  
you were talking about the accident rate at this  
intersection, correct?

A. Yes, sir.

Q. And that was based on statistics of accidents  
obtained from Hennepin County Public Works, is that  
correct?

A. Yes, sir.

Q. And essentially, Hennepin County keeps details on  
every accident that's reported at that intersection,  
is that correct?

A. Hennepin County keeps it as part of the state



1 accident system.

2 Q. Okay. But the point being, every reported accident,  
3 is that correct?

4 A. Yes, sir.

5 Q. And these printouts that you have provided have some  
6 detail about each accident, is that correct?

7 A. They do.

8 Q. One of the things that they include are the types of  
9 vehicles that are involved, is that correct?

10 A. Yes, sir.

11 MR. CAHILL: Okay. May I approach?

12 THE COURT: Yes.

13 BY MR. CAHILL:

14 Q. And there is a key for that, isn't that correct?

15 A. There is.

16 Q. Specifically, for unit type. If it's an automobile,  
17 it's a code 10, correct?

18 A. Yes, sir.

19 Q. For a pickup, it's 20, correct?

20 A. Yes, sir.

21 Q. And then there are a variety of codes for trucks,  
22 depending on the different types of trucks, is that  
23 correct?

24 A. Yes, sir.

25 Q. Specifically, 21 is for single truck, 22 is single

- 1 truck with trailer, 23 is truck tractor without  
2 trailer, 24 is truck tractor with semitrailer, 25 is  
3 truck tractor with twin trailer, 26 is a truck  
4 tractor with triple trailer, and then 28 is an  
5 unknown heavy truck, is that correct?
- 6 A. Yes, sir.
- 7 Q. And 27 is a van, kind of stuck in the middle there,  
8 right?
- 9 A. Yes, sir.
- 10 Q. And that pretty much covers the trucks that are  
11 listed under unit type, is that correct?
- 12 A. Yes, sir.
- 13 Q. Now, do you have a copy of the statistics for the  
14 years '92 through '96 for this intersection? And  
15 also '97, as long as you are at it.
- 16 A. Yes, sir.
- 17 Q. And if you could look under unit type for me and tell  
18 me how many of those units have any of the truck  
19 codes, that is code 21 through 26 or 28? And you can  
20 look at both vehicles on each accident.
- 21 A. I see three, sir.
- 22 Q. For the time period '92 through '97, is that correct?
- 23 A. I was trying to find the date on the top to make sure  
24 that I have the same dates that you are looking at.  
25 That would be correct, yes, sir.

- 1 Q. And one of those three is actually Ms. Price's truck  
2 that was involved in this accident, because that was  
3 '97, correct?
- 4 A. That would be correct, yes, sir.
- 5 Q. And of the other two, if you could direct your  
6 attention to the one that's about midway down in  
7 1994, that was a truck type 22, which on the log  
8 indicates a single truck with trailer, is that  
9 correct?
- 10 A. Yes, sir.
- 11 Q. And the severity of that accident was property damage  
12 only, isn't that right?
- 13 A. Yes, sir.
- 14 Q. These accidents are ranked by severity of injury, is  
15 that correct?
- 16 A. This list?
- 17 Q. Yes.
- 18 A. No.
- 19 Q. It has codes for severity of injury, is that correct?
- 20 A. There's a coding for severity of injury, yes, sir.
- 21 Q. Right. It's not organized by severity of injury.
- 22 A. No.
- 23 Q. But it has a code indicating the severity of injury.
- 24 A. I agree.
- 25 Q. "K" is is for killed?

- 1 A. Yes, sir.
- 2 Q. "A" is for incapacitating injury, that is, someone  
3 has to be removed from the scene by ambulance to the  
4 hospital?
- 5 A. Yes, sir. It's called a cap code system.
- 6 Q. Right. And "B" is a visible injury but not  
7 incapacitating, correct?
- 8 A. True. Normally taken to the hospital.
- 9 Q. But a cut on the forehead, somebody walking around  
10 with a cut on the forehead, would be a "B" type  
11 injury, correct?
- 12 A. Sure.
- 13 Q. "C" is no visible injury but complaints of pain or  
14 momentary loss of consciousness, correct?
- 15 A. Yes, sir.
- 16 Q. And "P" stands for property damage, no injuries, no  
17 complaints of injuries, is that correct?
- 18 A. Yes, sir.
- 19 Q. So one of the truck accidents only had property  
20 damage, correct?
- 21 A. Yes, sir.
- 22 Q. And then the other one in '97--there was obviously  
23 this case--also had a truck accident, is that  
24 correct?
- 25 A. Yes, sir.

- 1 Q. The first entry on the last page, correct, or on the  
2 page, is that correct?
- 3 A. Yes, sir.
- 4 Q. And again, that's a single truck with trailer,  
5 correct?
- 6 A. Yes, sir.
- 7 Q. And that's a severity "C" injury, in other words, no  
8 visible injury, complaint of pain or momentary loss  
9 of consciousness, is that correct?
- 10 A. Yes, sir.
- 11 Q. And in looking through all these accidents, there are  
12 no accidents, except for the one involving Heather  
13 Olson and Ms. Price, that involved any kind of semi  
14 tractor with a trailer, is that correct?
- 15 A. That's true.
- 16 Q. So as we look at all these accidents, all these  
17 trucks that are on that highway similar to the one  
18 the defendant was driving, that is, a belly dump  
19 truck attached to a semi tractor, none of them had  
20 accidents from 1992 through 1997, is that correct?
- 21 A. I agree. We don't know what volume of traffic there  
22 was for those vehicles in those years. We don't know  
23 how many trucks went through there in '92, for  
24 example.
- 25 Q. Well, your testimony was that this is an intersection

1           that, I believe you said, is giving trouble to trucks  
2           because you saw the skid marks, correct?

3    A.       Yes, sir.

4    Q.       So I guess I'm just asking, are there any accidents  
5           involving this type of truck on that intersection,  
6           other than Ms. Price's truck, between '92 and '97?

7    A.       We don't know how many --

8    Q.       Mr. Daubert, that's a yes-or-no question.

9    A.       Can't be answered yes or no, sir. All I can say is  
10           that there are skid marks in '97. We don't know what  
11           volume of trucks there were in '92.

12   Q.       And you don't know when those skid marks were put  
13           down, do you?

14   A.       The ones that are shown in the photographs?

15   Q.       That's correct.

16   A.       Within a few -- maybe not more than two weeks before  
17           this accident. They don't last that long.

18   Q.       Did you go out to the scene yourself?

19   A.       Been there a number of times.

20   Q.       For this case?

21   A.       Yes, sir.

22   Q.       And when was that?

23   A.       The most recent?

24   Q.       First, just tell me how many times you have been  
25           there and when you have been there. Well, first of

- 1 all, when did you become involved in this case, sir?
- 2 A. April 22nd of '98.
- 3 Q. Okay. That's when you were hired by the defense to  
4 act as their expert?
- 5 A. Yes, sir.
- 6 Q. And that was the first time you went out to the  
7 scene?
- 8 A. Yes, sir, for this case.
- 9 Q. Did you measure any of the skid marks when you went  
10 out to the scene?
- 11 A. No, sir.
- 12 Q. Okay. You didn't have a chance to shut off traffic  
13 and measure width or length, or anything like that,  
14 is that correct?
- 15 A. Of the skid marks?
- 16 Q. Yes.
- 17 A. No, sir. I didn't measure the skid marks.
- 18 Q. And you were not at the scene, obviously, on October  
19 2, 1997, is that correct?
- 20 A. That's correct, sir.
- 21 Q. Getting back to the statistics on the accidents, we  
22 have established how many involved trucks. The total  
23 number of accidents between 1992 and 1997 is how  
24 many? And I believe there is a summary at the end.
- 25 A. There is 47 through '96. And in '97, there's a

- 1 separate page for '97, and I don't see it.
- 2 Q. Does that show 15 total accidents for '97
- 3 (indicating)?
- 4 A. Yes, sir. It increased from 8 in '92 to 15 in '97.
- 5 Q. And if we look at the severity of the injuries, again
- 6 looking at the K, A, B, C codes, if you could just
- 7 verify this for me, there were no fatal accidents
- 8 between 1992 through 1996 involving any type of
- 9 vehicle, is that correct?
- 10 A. That's correct, sir.
- 11 Q. There were five level A injuries between 1992 and
- 12 1996, and that's not per year, that's total, isn't
- 13 that right?
- 14 A. Five A's, yes, sir.
- 15 Q. Seventeen B's. That is the not incapacitating but
- 16 injury visible to others, 17 of those in those five
- 17 years, is that correct?
- 18 A. Yes, sir.
- 19 Q. And 7 accidents didn't have any visible injury at all
- 20 but a complaint of pain?
- 21 A. Yes, sir.
- 22 Q. Eighteen were strictly property damage?
- 23 A. I agree.
- 24 Q. And in 1997, there was one fatal and that was Heather
- 25 Olson, is that correct?



- 1 A. Yes, sir.
- 2 Q. There were no level A injury accidents, is that  
3 correct?
- 4 A. That's correct.
- 5 Q. So if you look between '92 and '97 involving all  
6 types of vehicles, the only fatal was Heather Olson  
7 and there were only five injuries in which persons  
8 were level A injuries, is that correct?
- 9 A. Yes, sir.
- 10 Q. Sir, did you prepare a written report regarding your  
11 findings on this case?
- 12 A. No, sir.
- 13 Q. Going back to the accident reconstruction done by  
14 Trooper Walerius, you were able to review his written  
15 report, is that correct?
- 16 A. Yes, sir.
- 17 Q. And you talked about drag factors, first of all. Did  
18 you have any problem with the drag factor that he  
19 found, other than the type of material he used to  
20 measure it?
- 21 A. No, sir.
- 22 Q. Okay. It was a value you would expect for an asphalt  
23 type roadway?
- 24 A. He never measured the coefficient of friction for the  
25 truck. He measured it for a passenger car and then

- 1           made some assumptions based on statistics or based on  
2           textbooks.
- 3    Q.       What would your drag factor be?
- 4    A.       I wouldn't guess. I'd go out and measure it.
- 5    Q.       Did you go out and measure it?
- 6    A.       No, sir.
- 7    Q.       Is there anything inaccurate in -- I think you  
8           testified there was nothing, no glaring defect in his  
9           reconstruction, is that correct?
- 10   A.       No, sir. Math was correct.
- 11   Q.       All right. And one part of the math involves taking  
12           some times, multiplying it by how fast a vehicle is  
13           traveling, is that correct?
- 14   A.       Yes, sir.
- 15   Q.       For example, there was a five-second yellow light, is  
16           that correct?
- 17   A.       Yes, sir.
- 18   Q.       And you made some calculations of your own assuming a  
19           vehicle was going 50 miles an hour, which was the  
20           speed limit, is that correct?
- 21   A.       Yes, sir.
- 22   Q.       Is there any reason why you based your calculations  
23           on 50 miles an hour?
- 24   A.       I based it on what the timing of the light was at the  
25           speed limit. I was looking at the space available or

- 1           stopping distance, the options and the dilemma, and  
2           that's always based on the speed limit.
- 3    Q.       And so you would have to assume for your dilemma zone  
4           or your measurements to be accurate that the vehicle  
5           was in fact traveling at the speed limit of 50 miles  
6           an hour, isn't that correct?
- 7    A.       I'm just giving the example of that's what it is and  
8           it's always done based on the speed limit.
- 9    Q.       So are you saying that in this case those are just  
10          assumptions that it was 50 miles an hour and you  
11          don't know how fast the vehicle was going?
- 12   A.       At the point of the collision where the brakes  
13          started skidding, the speed of the vehicle was 47  
14          miles an hour.
- 15   Q.       Do you have any reason to dispute that?
- 16   A.       No, sir.
- 17   Q.       Okay.
- 18   A.       We just don't know what the speed of the vehicle is  
19          at any point other than that.
- 20   Q.       Okay.
- 21   A.       Could have been slower, could have been faster. We  
22          just don't know.
- 23   Q.       It could have been slower than that and speeding up  
24          to get through the intersection, isn't that right?
- 25   A.       Sure. Faced with the dilemma of either stopping or

- 1 going through, sure, that's possible.
- 2 Q. And that dilemma zone or the stopping distance varies  
3 based on speed, is that correct?
- 4 A. The distance that it takes to do that? Yes, sir.
- 5 Q. If you are going slower, -- assume the vehicle stays  
6 the same. If you go slower, the stopping distance is  
7 shorter, is that correct?
- 8 A. Yes, sir. Except it's hard to accelerate a big truck  
9 like that loaded very quickly.
- 10 Q. Right. You can't go from 40 miles an hour to 47  
11 miles per hour in a short period of time, is that  
12 correct?
- 13 A. I agree.
- 14 Q. Okay. It would actually take quite a while?
- 15 A. It would.
- 16 Q. It's not a sports car?
- 17 A. No.
- 18 Q. Okay. And you talked about the utility poles that  
19 are along the highway and that they would, I believe  
20 you used the term, cause clutter, is that correct?
- 21 A. It's called street furniture or clutter, yes, sir.
- 22 Q. Street furniture. Okay.
- 23 A. All the things are street furniture. The fire  
24 hydrants, the poles, all that stuff is called street  
25 furniture.

- 1 Q. How big are these utility poles we are talking about;  
2 how wide are they? Are they your standard phone  
3 pole?
- 4 A. They are a little larger in some cases. They range  
5 from eight to 12 inches.
- 6 Q. Okay. In diameter?
- 7 A. Yes, sir.
- 8 Q. You mentioned that there are wire loops in the  
9 intersection. What are those called, called pads or  
10 something like that? It tells the system that  
11 there's a car waiting and it can cycle the lights to  
12 eventually give that car a green light, is that  
13 right?
- 14 A. Yes, sir.
- 15 Q. And generally does that happen instantaneously, like  
16 when a car pulls up to them, the lights start turning  
17 immediately?
- 18 A. No. There is an approach loop that tells the light  
19 that a car is approaching.
- 20 Q. Okay.
- 21 A. They can be 400 feet back from the intersection.
- 22 Q. Okay. Where are they located in this intersection?
- 23 A. I'm not sure that I have the loop diagram. I looked  
24 at it, but I don't think that I have it.
- 25 Q. Okay. Do you recall researching that topic?

- 1 A. Other than looking at that they were there, no.
- 2 Q. Okay. And did you see them close to the intersection  
3 or are we talking 100 yards back?
- 4 A. You wouldn't see them on the pavement. The only  
5 place you'd see them in this case would be on the  
6 diagram of the intersection which is in the box.
- 7 Q. Okay. Did you see the diagram itself?
- 8 A. Yes, sir.
- 9 Q. And do you have any recollection where they were?
- 10 A. I don't.
- 11 Q. Okay. But in any case, the five-second yellow for  
12 eastbound traffic, is that correct?
- 13 A. Yes, sir.
- 14 Q. There is one second of all red, is that correct?
- 15 A. Yes, sir.
- 16 Q. And Trooper Walerius was speaking about using a 1 1/2  
17 to two second calculation for this all red area. He  
18 appears to have the truck going approximately 67 feet  
19 from all red to green for north-southbound traffic,  
20 is that right?
- 21 A. Yes. You and I talked about that the other day, that  
22 it wasn't really two seconds that he testified to.  
23 He put on the diagram only one second.
- 24 Q. Okay. So his calculations as they are contained on  
25 this diagram are actually calculations using one

- 1 second of all red, is that correct?
- 2 A. No matter what he said in his testimony, it is one  
3 second on the diagram.
- 4 Q. Okay. So that is an accurate reflection of how the  
5 lights are actually working?
- 6 A. Yes, sir.
- 7 Q. Someone going 50 miles an hour, you testified, goes  
8 73 feet per second?
- 9 A. Yes, sir.
- 10 Q. Somebody going 47 miles an hour is going 69 feet per  
11 second?
- 12 A. Yes, sir.
- 13 Q. And somebody going 40 miles an hour is going roughly  
14 59 feet per second, is that correct, if you have the  
15 calculator handy?
- 16 A. That sounds about right. If you take the speed in  
17 miles per hour and multiply it by one and a half, you  
18 get feet per second. So 59 would be about right for  
19 40.
- 20 Q. Okay. And you mentioned that the green is a minimum  
21 of 10 seconds, is that correct?
- 22 A. Yes, sir.
- 23 Q. And you said, I think you used the phrase "to clear  
24 the intersection." What does that mean?
- 25 A. You don't want the lights to keep changing all the

- 1 time. It's called snappy, you get too quickly a  
2 change to it. So you leave it green for a direction  
3 for 10 seconds to get the vehicle started, get it  
4 through and get it cleared of the intersection. And  
5 you always assume that there is two vehicles.
- 6 Q. Okay.
- 7 A. So you want to get that second one through the  
8 intersection and far enough away before you would cut  
9 off its green.
- 10 Q. And in your mind is that pretty reasonable to clear  
11 the intersection from side-to-side?
- 12 A. To get the two of them through, 10 seconds? Sure.  
13 It can be done in less, but that's -- 10 seconds is a  
14 reasonable number.
- 15 Q. Okay. And is it reasonable to assume that a vehicle  
16 could go from stopped to the middle of the  
17 intersection in about four seconds?
- 18 A. Yes, sir.
- 19 Q. And that includes reaction time, is that correct?
- 20 A. It doesn't in this case. It's the light turns green  
21 and the vehicle starts.
- 22 Q. Okay. So in other words, the four seconds doesn't  
23 even include reaction time?
- 24 A. No, it does not.
- 25 Q. So if you include reaction time, it might even be a



1 longer period of time?

2 A. If you include a reaction time, yes. Normally we  
3 don't because people are watching the lights.

4 Q. So in your mind, a vehicle would take about four  
5 seconds to get to the middle of the intersection,  
6 maybe a little beyond. Four seconds is a reasonable  
7 amount of time?

8 A. Yes, sir.

9 Q. Maybe a second or even up to two and a half seconds  
10 of reaction time, is that correct?

11 A. Normally not. Because people -- there are people  
12 that wait and you have to honk the horn to get them  
13 started, but normally not. People are watching the  
14 lights.

15 Q. Yes. Some people might be 30 seconds because they  
16 are not paying attention, right?

17 A. I agree.

18 Q. But generally, someone who is being attentive, you  
19 will see one to one and a half seconds on top that  
20 four seconds, is that right?

21 A. Normally not. Normally we have the problem of people  
22 jumping the light instead of delaying.

23 Q. In any case, you talked about reaction time, and when  
24 you speak of that are you talking about the time to  
25 both perceive the event, make a choice and start to

- 1 act on the event?
- 2 A. Yes, sir.
- 3 Q. Okay. All that's included in what you have been  
4 describing as perception reaction time?
- 5 A. Yes, sir.
- 6 Q. Okay. You mentioned that reaction time can be longer  
7 at night. Is that the reason why some areas have  
8 slower speed limits for nighttime?
- 9 A. No. That's not the reason.
- 10 Q. Okay. There's a different reason why we have slower  
11 speeds at night?
- 12 A. Yes, sir.
- 13 Q. The reason being?
- 14 A. Headlight, how far the headlight goes out.
- 15 Q. Okay. You never want to drive faster than you could  
16 stop within your headlight distance, isn't that  
17 right?
- 18 A. You can't stop at 55 miles an hour with your existing  
19 headlights. You are outdriving your headlights at  
20 55.
- 21 Q. And you mentioned that trucks take a longer distance  
22 to stop. Is that primarily because of their weight?
- 23 A. No, sir.
- 24 Q. Is it primarily because of their brake system?
- 25 A. No, sir. It's the third one.

- 1 Q. Is because of the hard tires we are talking about?
- 2 A. It is primarily because of the hard tires.
- 3 Q. This is not big news to a truck driver, is that
- 4 correct?
- 5 A. That it takes longer to stop?
- 6 Q. Correct.
- 7 A. That's true.
- 8 Q. Okay. People who drive trucks know that it takes
- 9 longer to stop a truck, isn't that right?
- 10 A. Normally, yes, sir.
- 11 Q. In this case, you reviewed the vehicle inspection
- 12 report, is that correct?
- 13 A. Yes, sir, I did.
- 14 Q. And in fact, you had a chance to look at the truck
- 15 yourself, is that right?
- 16 A. I did.
- 17 Q. And it's your conclusion that there were some
- 18 equipment violations, but none of them caused this
- 19 accident, correct?
- 20 A. None of them caused or contributed to the accident,
- 21 no, sir.
- 22 Q. Okay. Now, some of those violations, however, are
- 23 what we call out-of-service violations, is that
- 24 correct?
- 25 A. Yes, sir.

- 1 Q. If the State Patrol were to pull a truck over and  
2 find that violation, they would tag it; truck can't  
3 be driven until those are remedied, is that correct?
- 4 A. That's correct.
- 5 Q. The clevis pin being missing on one part of the brake  
6 system, on the slack adjuster. I think I got all  
7 those terms correct. Did I?
- 8 A. Yes, sir.
- 9 Q. That's an out-of-service violation, correct?
- 10 A. Yes, sir.
- 11 Q. All right. But in this case, the brakes were enough  
12 that they were able to lock up the wheels of this  
13 truck that the defendant was driving, isn't that  
14 right?
- 15 A. After impact, yes, sir.
- 16 Q. And the equipment did not or was not so deficient  
17 that there were no brakes; there were brakes, is that  
18 right?
- 19 A. Yes, sir, there were.
- 20 Q. So when the defendant were to press on the brake  
21 pedal, there would be brakes there, is that correct?
- 22 A. Yes, sir.
- 23 Q. You mentioned that there would be differing brake  
24 distances based on whether you lock up the wheels in  
25 a skid versus a more controlled brake, is that

- 1 correct?
- 2 A. Yes, sir.
- 3 Q. And I believe you mentioned that a skidding,  
4 uncontrolled stop, as you called it, would be  
5 slightly under 300 feet for this kind of truck?
- 6 A. Yes, sir.
- 7 Q. Would about 255 feet be within the realm of  
8 possibility?
- 9 A. That's a little short.
- 10 Q. Okay. What number do you come up with?
- 11 A. 283, I think, is the number that I came up with.
- 12 Q. And how did you come up with that?
- 13 A. Taking the speed and using a coefficient --
- 14 Q. You were using 50 miles an hour, isn't that correct?
- 15 A. Yes, sir.
- 16 Q. And when you calculated that, what did you come out  
17 with?
- 18 A. 283.
- 19 Q. Would that stopping distance be shorter if the  
20 defendant were traveling less than 50 miles an hour;  
21 for example, 47?
- 22 A. Not very much. A few feet. There is just not much  
23 difference between 47 and 50 with that big a truck.
- 24 Q. Okay. And you did mention you have been hired by the  
25 defense for this case, is that correct?

- 1 A. Yes, sir.
- 2 Q. And in fact, you have spent quite a bit of time  
3 testifying as an expert in court on a private  
4 retainer, is that correct?
- 5 A. That's how I feed my family.
- 6 Q. Okay. And how much do you charge for your services?
- 7 A. The company charges \$180 an hour for my court time.
- 8 Q. And your position with the company is what?
- 9 A. This year I'm president.
- 10 Q. Okay. How many people are involved in this concern,  
11 Search Engineering?
- 12 A. Five of us.
- 13 Q. And you are all accident reconstruction or you all  
14 have your different things you do?
- 15 A. The only thing we are doing now is accident  
16 reconstruction. We have had other people involved in  
17 the past.
- 18 Q. And have you been out and actually done accident  
19 reconstruction at accident scenes?
- 20 A. Yes, sir.
- 21 Q. Okay. And when was that? Was that when you were a  
22 police officer or after that?
- 23 A. The last time I would have done that was working with  
24 the State.
- 25 Q. And when was that?

- 1 A. '83 as a first responder. I've done lots of  
2 reconstructions the day of or the day after, but not  
3 on the scene of while they are still there.
- 4 Q. While the vehicles are still there and --
- 5 A. I may get there a couple of hours late now.
- 6 Q. You drive yourself, don't you?
- 7 A. Yes, sir.
- 8 Q. Do you drive a truck?
- 9 A. Yes, sir.
- 10 Q. Commercial driver's license?
- 11 A. Not any longer.
- 12 Q. Okay. So you drive your own personal car like to get  
13 to court. I assume you didn't drive a semi down  
14 here.
- 15 A. No. I didn't bring it down.
- 16 Q. Okay. You come to intersections that you know to be  
17 dangerous?
- 18 A. Yes, sir.
- 19 Q. What action do you take when you approach a dangerous  
20 intersection?
- 21 A. Depends if I know it's dangerous or not. If I know  
22 that it's dangerous, watch more carefully on the side  
23 roads, on the sides.
- 24 Q. And would you slow down?
- 25 A. No.

1 Q. Okay.

2 A. You always get the chance of being run over if you  
3 slow down. That's the dilemma that any truck driver  
4 faces. It takes longer to stop, but if you go slower  
5 you get run into.

6 Q. And somebody driving a semi worries about getting  
7 crushed and run over, is that right?

8 A. Or run into, sure.

9 Q. You are familiar with Minnesota statutes regarding  
10 speed, are you not?

11 A. Yes, sir.

12 MR. CAHILL: May I approach?

13 BY MR. CAHILL:

14 Q. And the basic speed rule that is contained in  
15 Minnesota law is Minnesota Statutes 169.14, is that  
16 correct?

17 A. Yes, sir.

18 Q. Subdivision 1 provides the basic rule and it reads as  
19 follows: "No person shall drive a vehicle on a  
20 highway at a speed greater than is reasonable and  
21 prudent under the conditions. Every driver is  
22 responsible for becoming and remaining aware of the  
23 actual and potential hazards then existing on the  
24 highway and must use due care in operating a vehicle.  
25 In every event, speed shall be so restricted as may



1 be necessary to avoid colliding with any person,  
2 vehicle or other conveyance on or entering the  
3 highway in compliance with legal requirements and the  
4 duty of all persons to use due care." Is that what  
5 Subdivision 1 says?

6 A. Yes, sir.

7 MR. CAHILL: Nothing further.

8 THE COURT: Mr. Sheppard.

9 MR. SHEPPARD: Thank you, Your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 BY MR. SHEPPARD:

13 Q. Mr. Daubert, do you feel that the defendant was  
14 violating that speed due care requirement?

15 MR. CAHILL: Object. Calls for a legal  
16 conclusion.

17 THE COURT: Sustained.

18 MR. SHEPPARD: May we approach, Your Honor?

19 THE COURT: Yes.

20 (Discussion was held at the bench off the  
21 record.)

22 THE COURT: Okay. Do you have another  
23 question, Mr. Sheppard?

24 BY MR. SHEPPARD:

25 Q. You were asked about some of the assumptions of the

1 trooper's reconstruction. The calculations of this  
2 time back would change if this vehicle was not at a  
3 full stop, is that correct?

4 A. It would.

5 Q. And if it was coasting, the time would be shorter, is  
6 that correct, that the vehicle took to get out the 44  
7 feet?

8 A. Yes, sir.

9 Q. And so the time depicted of the red time would be  
10 shorter?

11 A. Sure. I would expect the truck to be on the brakes  
12 quicker if it took -- if it watched the vehicle come  
13 out for all of the four seconds.

14 Q. And likewise, if the vehicle was sitting one more car  
15 length ahead, that would also shorten the time  
16 depicted, is that right?

17 A. Yes, sir.

18 Q. And if in fact the vehicle was stopping as compared  
19 to at a full stop, that would also change the amount  
20 of red, would shorten the period of red time, would  
21 that be correct?

22 A. Yes, sir.

23 Q. Has anything that was indicated on cross-examination  
24 by Mr. Cahill changed your opinion as to the status  
25 of this truck being in a dilemma zone as it was

1 approaching the lights?

2 A. No, sir. Speed was about the speed limit. There's  
3 no reason to go lower than the speed limit.

4 Q. Is there any physical evidence that you are aware of,  
5 having reviewed these materials, that would indicate  
6 that the defendant was acting extremely  
7 inappropriate?

8 MR. CAHILL: Object as a legal conclusion,  
9 Your Honor.

10 THE COURT: Sustained.

11 MR. SHEPPARD: That's all the questions I  
12 have, Your Honor.

13 MR. CAHILL: I have nothing further.

14 THE COURT: Thank you very much, Mr. Daubert.

15 THE WITNESS: Thank you, ma'am.

16 MR. SHEPPARD: Your Honor, the defense would  
17 rest.

18 THE COURT: All right. Could the attorneys  
19 approach.

20 (Discussion was held at the bench off the  
21 record.)

22 MR. SHEPPARD: May I have a moment, Your  
23 Honor?

24 THE COURT: Yes.

25 (Further Discussion was held at the bench off

1 the record.)

2 MR. SHEPPARD: Thank you, Your Honor.

3 THE COURT: All right. Mr. Cahill.

4 MR. CAHILL: Thank you, Your Honor. May it  
5 please the Court, Counsel, members of the jury:

6 On October 2, 1997, Roxanne Price got in a  
7 truck, turned the key and started down the road. And  
8 the issue that you have to face now is to look at the  
9 evidence and ask yourself: did she take risks or did  
10 she take care? Because that's what this case comes  
11 down to.

12 The defendant is charged with two counts of  
13 criminal vehicular homicide. The first count relates  
14 to the death of Heather Olson, the second count  
15 relates to the death of her unborn child.

16 As the representative of the State, it is my  
17 duty to prove to you beyond a reasonable doubt the  
18 elements of that crime. I am going to read those  
19 elements to you so you know what it is the State has  
20 to prove, because there's no burden on the State of  
21 Minnesota or any prosecutor in any case to answer  
22 every question you might have, to prove every fact to  
23 the detail. You might, after looking at all this,  
24 have some questions about was it 680 feet or 580  
25 feet. Those are perfectly legitimate questions, but

1           it does not mean that the State has not met its  
2           burden of proof. Because there are certain things  
3           the State must prove beyond a reasonable doubt and,  
4           once proven, it is your duty to return a verdict of  
5           guilty.

6                        As to the first count, the elements are as  
7           follows, and the judge will be instructing you on  
8           this and you will actually get a written copy of the  
9           instructions to take with you so that if you miss  
10          what I'm talking about you don't have to worry about  
11          it. But the three things that the State has to prove  
12          beyond a reasonable doubt as to Count I are as  
13          follows:

14                       First, the death of Heather Marie Olson must  
15          be proven. That seems pretty straightforward.  
16          Everybody in this case has testified she was the  
17          driver of that Geo Metro, she was taken out, she was  
18          taken to North Memorial Hospital, her mother told you  
19          she died at the hospital. Dr. Dan Davis told you  
20          that, in fact, he did an autopsy on her and was able  
21          to determine the cause of death. Her death has been  
22          proven.

23                       Second, defendant caused the death of Heather  
24          Marie Olson by operating a motor vehicle in a grossly  
25          negligent manner. "Grossly negligent" means with

1 very great negligence or without even scant care.  
2 Negligence is a failure to use the reasonable and  
3 ordinary care you would, carelessness, so to speak.  
4 Gross negligence is above that. It's very great  
5 negligence, without even scant care.

6 As far as this element goes, the element  
7 again seems to come down to gross negligence. There  
8 is really no issue that defendant was the driver of  
9 the truck. She told officers at the scene that she  
10 was trying to beat the light. She told Vincent Miels  
11 she was trying to beat the light. She was the driver  
12 of the truck. Doesn't seem to be much of an issue  
13 there.

14 And that the death of Heather Marie Olson was  
15 caused by the operation of the motor vehicle. Dr.  
16 Davis told you that Heather Olson's injuries were  
17 many; they were broken ribs, various internal organs  
18 were punctured, were lacerated and, most importantly,  
19 her aorta, a major blood vessel coming from the  
20 heart, was transected, ripped apart, causing extreme  
21 blood loss within her body, causing her death.

22 Dr. Davis told you that it's very common in  
23 auto accidents because of the force of the person  
24 stopping or being pushed suddenly, the aorta is  
25 wrapped around the more rigid bronchus, the tubes

1 going into the lungs, and by doing that, it gets  
2 ripped. Very common in auto accidents. So there's  
3 really not much of an issue that her death was caused  
4 by this collision.

5 Now, not much of an issue, that it's a motor  
6 vehicle involved, a semi tractor with a belly dump  
7 trailer and a Geo Metro car. The Court will,  
8 however, define motor vehicle for you as a  
9 self-propelled device for moving persons or property  
10 or pulling implements from one place to another,  
11 whether the device is operated on land, rails, water  
12 or in the air. This is the classic motor vehicle,  
13 the internal combustion engine vehicles you see on  
14 the road every day. Not much of an issue there.

15 And finally, the third element, that the  
16 defendant's act took place on or about October 2,  
17 1997, in Hennepin County. That's often referred to  
18 as venue, which is why we have this case here in a  
19 Hennepin County courtroom, because it happened in  
20 Hennepin County.

21 Two officers testified that this intersection  
22 depicted in Exhibit 2 is entirely within the City of  
23 Brooklyn Park in Hennepin County in the State of  
24 Minnesota. All the witnesses are uniform in saying  
25 this occurred around 11:00 o'clock on October 2,

1           1997. Heather Olson died shortly after midnight. We  
2           must prove, however, that the defendant's act took  
3           place on or about October 2nd, and even then note it  
4           is about, on or about October 2nd, 1997.

5                     If those three elements are proven beyond a  
6           reasonable doubt, it is your duty to find the  
7           defendant guilty.

8                     The second count is similar, criminal  
9           vehicular homicide or operation resulting in the  
10          death of an unborn child. Again, there are three  
11          elements:

12                    First, the death of an unborn child must be  
13          proven. An unborn child is the unborn offspring of a  
14          human being conceived but not yet born. We don't  
15          have to get into any arguments or fights over  
16          abortion and is a child, an unborn child, a person.  
17          The law simply states that if the unborn child -- if  
18          there is an unborn child conceived, that's enough,  
19          that's an unborn child for purpose of this statute.  
20          We don't need to get into all the arguments that go  
21          around that. Dr. Dan Davis, again, told you the  
22          unborn child in this case, male fetus, died because  
23          of the injuries to Heather Olson, the mother.

24                    Second, defendant caused the death of the  
25          unborn child of Heather Marie Olson by operating a



1 motor vehicle in a grossly negligent manner. Again,  
2 definition is the same, the issue is the same, gross  
3 negligence.

4 And finally, that third element, defendant's  
5 act took place on or about October 2, 1997, in  
6 Hennepin County.

7 Gross negligence. Did the defendant take  
8 risks or did the defendant take care? When you are  
9 looking at the facts in making that analysis, look  
10 first at the eyewitnesses. We don't have to rely on  
11 assumptions or science or calculations or  
12 measurements. We have the eyewitnesses who saw  
13 exactly what happened, one positioned right behind  
14 the victim's vehicle, and that was Cadet Vang, now  
15 Deputy Vang. We have another, a fellow trucker,  
16 Vincent Miels, coming westbound on County Road 30.  
17 Look at their testimony.

18 Cadet Vang, first of all, says that he was  
19 about 100 yards or so behind the car. At that point,  
20 at that point he could not tell whether the car was  
21 at a complete stop. He could see the brake lights  
22 on. From that distance he could not tell. But his  
23 testimony later, if you will recall, is that as he  
24 got closer, he was closing the gap as he came towards  
25 the intersection and, finally, he was about two or

1 three car lengths away. And from that position he  
2 could see she was at a full stop. That's his  
3 testimony.

4 There are no assumptions here that Heather  
5 Marie Olson was at a full stop. We have eyewitness  
6 testimony she was at a full stop. Did Cadet Vang see  
7 that when he was 100 yards away? No. He testified  
8 very truthfully, he couldn't tell at that vantage  
9 point. It was only -- he got up closer, though, and  
10 he was close enough to say yes, the brake lights were  
11 on, the position did not change, she was at a full  
12 stop.

13 Cadet Vang also told you that as he was  
14 coming up to the intersection, he broke the tree  
15 line, he could see down County Road 30. The light  
16 was now green, Heather Olson was proceeding into the  
17 intersection, he was about to proceed into the  
18 intersection himself when he looked and he could see  
19 a truck, he estimated about 150 feet down. At one  
20 point he said one and a half of the truck lengths.  
21 When he put a number on it, he said 150 feet down.  
22 Now, that's not where the truck was when the light  
23 turned green, mind you, the light was already green  
24 according to his testimony, and it is still 150 feet  
25 west of the intersection, heading east, not slowing

1 down, not braking, not blowing its horn. In fact, it  
2 was his testimony that the truck sped up to get  
3 through the intersection, which is corroborated by  
4 the defendant's own statements after the accident  
5 occurred, to Steve Baker, Officer Steve Baker, and to  
6 Vincent Miels that she was trying to beat the light,  
7 trying to beat the light.

8 Cadet Vang was able to give you an estimate  
9 of the speed. He estimated about 50 miles an hour.  
10 Counsel brought out his earlier reports would show an  
11 estimate of 40 miles per hour. The accident  
12 reconstruction shows 47 miles per hour. All are  
13 about in the right area. And yes, they are below the  
14 speed limit or at the speed limit, the posted speed  
15 limit. And that's important, because, as we just  
16 read in the law when Mr. Daubert was testifying, the  
17 speed you go must always be reasonable and prudent.  
18 If you are approaching an intersection, you have been  
19 there before, and if the lights are truly too short,  
20 that the yellow is too short, then, unlike what Mr.  
21 Daubert said, you do have a reason to reduce your  
22 speed. You have a duty to do what is reasonable and  
23 prudent under the circumstances. You can't go faster  
24 than is reasonable, even if you are going under the  
25 posted speed limit.

1           The vehicle inspection showed that the city  
2           horn, the horn on the defendant's truck, was  
3           inoperative. But the air horn, that loud horn we  
4           associate with semi trucks, was operable. Cadet  
5           Vang, sitting at the intersection, never heard that  
6           horn blow, no warning given to anybody who might be  
7           in the intersection.

8           Then we have the testimony of Vincent Miels  
9           coming in the opposite direction. Again, fellow  
10          trucker, he saw the light, he was able to stop, and  
11          he was close enough that he had no doubt the light  
12          turned red for him, which we know from all the  
13          reconstructionists who have testified, would turn the  
14          light red for eastbound traffic. He saw the  
15          defendant's truck, not at the intersection, not  
16          hitting the intersection as it turned red, but behind  
17          the intersection, well behind the intersection. He  
18          was able to stop. The defendant chose not to.

19          He also testified that there were no other  
20          vehicles in the intersection. When the light turned  
21          red for him, nobody was jumping the gun, so to speak,  
22          nobody was already in the intersection. The  
23          intersection was clear. So when he came, he stopped.  
24          He could see no vehicles in the intersection. It's  
25          only afterwards when the light was red and the light

1           turned green for northbound traffic that Heather  
2           Olson's vehicle entered the intersection.

3                         And the fact that her vehicle is first in  
4           line should give you reason to believe that she is in  
5           fact at a full stop. What else would signal the  
6           loops in the pavement that there's a car there  
7           waiting to go forward? Corroboration of Cadet Vang's  
8           testimony that she was in fact at a full stop.

9                         Mr. Miels also stated that he did not hear  
10          any horn, no type of warning; simply, the defendant's  
11          vehicle speeding through the intersection and  
12          T-boning the Geo Metro, pushing it into the ditch.  
13          The truck, as you note from the skidmarks on the  
14          diagram, as you will note in the photographs, barely  
15          -- in fact, doesn't even change direction. The Geo  
16          Metro leaves scuff marks from the car being pushed  
17          sideways, sideways with the wheels still in contact  
18          with the ground. This is not a truck that was going  
19          10 miles an hour, and nobody testified to that. Even  
20          the defense expert says 47 miles an hour at the point  
21          of impact is a reasonable estimate of the speed.  
22          It's reasonable based on all the physical evidence  
23          left at the scene.

24                         And the reason that truck was going 47 miles  
25          per hour is because the defendant was not simply

1           inattentive, looks up, sees the light and slams on  
2           the brakes. She made a choice. She made a choice to  
3           try and beat the light. That's what she told Officer  
4           Baker, that's what she told Vincent Miels. She  
5           didn't react to it and start to put the brake on.  
6           She reacted to it and made a conscious decision to  
7           speed up, to try and beat the light, to get through.  
8           And when that plan went awry, what did she do? Did  
9           she honk the horn? Did she take to the ditch? Did  
10          she apply the brakes? Not until four feet before are  
11          there any skidmarks. One skid mark four feet before.  
12          Almost all the skidmarks are after the impact.

13                       Who was this person trying to beat the light?  
14          The defendant, driving this truck without a  
15          commercial driver's license. And that's important.  
16          Why do we require truck drivers to have commercial  
17          driver's licenses? Because driving a truck is not  
18          like driving a Geo Metro. It is a heavy vehicle, it  
19          is a dangerous vehicle, it carries in this case 40  
20          tons of weight down the road. That's a lot of  
21          momentum. And the law requires, recognizing that,  
22          that drivers of trucks, of commercial vehicles, must  
23          do more than the basic passenger car driver. They  
24          are held to a higher standard of care.

25                       So we're talking about the reasonable and

1 ordinary care that a person would exercise in a  
2 situation. You have to consider the situation, the  
3 fact that she is driving a truck, is required to do  
4 daily inspections of her truck to see if there are  
5 any out-of-service violations. This defendant did  
6 not have a commercial driver's license, but she's  
7 driving that truck, so she's got to be held to that  
8 standard: a reasonable person in that situation, in  
9 the cab of a Kenworth, not in the driver's seat of a  
10 Geo Metro.

11 This is a defendant who didn't do any safety  
12 inspections, which are not highly significant because  
13 none of the equipment violations caused this  
14 accident. Let me make that very clear. We agree on  
15 that point. None of the equipment caused this  
16 accident. It is entirely the defendant who caused  
17 this accident. It wasn't that she stepped on the  
18 brakes and the brakes weren't there; the brakes were  
19 there, in fact, they locked up the wheels. They were  
20 good enough to put the truck into a skid. The brakes  
21 were there.

22 But consider if she had seen in just a basic  
23 look-through of her truck, she would have found some  
24 of these conditions that were visible on a basic  
25 walk-around. This is an example, Exhibit 37, this

1 clevis pin is missing. It could be seen by any truck  
2 driver as they do their daily inspections. This  
3 would take the truck out of service. If she had done  
4 those safety inspections, that truck would never even  
5 have been on the road. So not only should Roxanne  
6 Price never have been in the cab of that truck  
7 because she didn't have the license, that truck  
8 should never have been on the road because, if the  
9 inspections had been done, the truck wouldn't be on  
10 the road because it was unsafe.

11 Did those violations cause the accident? Not  
12 really. But the defendant's failure to inspect, to  
13 make sure she had a safe truck, allowed an unsafe  
14 truck to be on the road, allowed that truck to be  
15 there at County Road 30 and County Road 14 at 11  
16 o'clock on October 2nd.

17 What is particularly troubling about this is  
18 that this is a defendant who has been through that  
19 intersection driving this truck. You heard Colleen  
20 Donovan's testimony, you saw the video of what the  
21 intersection looks like, and you heard her testify  
22 that she knew the defendant had been working for her.  
23 This was at least her second day. The truck drivers  
24 put in about eight round trips each day. They follow  
25 the same route, which means this defendant went



1 through that intersection at least 16 different times  
2 the day before and we don't know how many on that  
3 night, on this shift before the collision at 11  
4 o'clock.

5 So we have a defendant who's been by this  
6 intersection 16 times. She's familiar with it. She  
7 has to be aware of the risks. If this is the  
8 dangerous, obstructed intersection that we keep on  
9 hearing inferences about--it's not the truck, it's  
10 not the defendant, it's the intersection, the view  
11 was obstructed, look at all the skidmarks in the  
12 pavement, look at all the phone poles--if this is  
13 truly that dangerous an intersection, then the answer  
14 is, you exercise the amount of care somebody would.  
15 You slow down. You take care. You know it's  
16 dangerous. Take appropriate action. You don't do as  
17 Mr. Daubert suggests, which is go the speed limit, go  
18 ahead, there is no reason to not go the speed limit.

19 What happened to all these obstructions, what  
20 happened to all the dangerousness of this inter-  
21 section, an intersection which has had how many truck  
22 accidents? Three, including this one. And the other  
23 two, one is property damage only and one is no  
24 visible injuries, not even involving the type of  
25 truck we are talking about here, a semi truck with a

1 trailer. From 1992 to 1997, not a single truck of  
2 this variety driven by the defendant had an accident.  
3 Yet, the defense wants you to believe that this is  
4 such a terrible intersection, such a dangerous  
5 intersection that it's not the defendant's fault.

6 Well, members of the jury, even if you want  
7 to accept that this is a dangerous intersection, that  
8 just means that a person who has been through it 16  
9 times should take extra special precaution and not  
10 simply ram through at 47 miles per hour, wiping out  
11 everything in its path. Because you know what's  
12 gonna happen when you are up in the seat of that cab:  
13 nothing. You are going to be sitting up in that  
14 truck and, after the accident is over, you are going  
15 to be sitting in a truck that looks just like this  
16 (indicating), with hardly a dent on it. You can take  
17 that risk without any problem. It is no risk to you.  
18 It is a risk to every driver on the road, however, as  
19 shown in Exhibit 9. This is what happens  
20 (indicating) when you don't take care, when you don't  
21 take any care when you approach that intersection.

22 When you add to that the accident  
23 reconstruction done by Trooper Walerius, he is a  
24 State Trooper, he doesn't get paid extra for his  
25 opinions. He's just out there doing his job. And he

1 did a reconstruction, which in this case he submitted  
2 for his certification, so his peers have looked at  
3 this, have torn it apart and have accepted his  
4 conclusions. And this is what he tells you.  
5 Assuming at 47 miles per hour -- it's actually a  
6 simple calculation of how many feet per second a  
7 truck would be going at 47 miles per hour, times how  
8 much time for the yellow light, how much time for the  
9 all red, and how much time it would be red for this  
10 traffic but green for northbound. And he used for  
11 that green light period 4.02 seconds. Mr. Daubert  
12 says if you add in a reaction time, it's even more.  
13 And if you look on the video, you probably noticed  
14 some of the vehicles, takes about four seconds or so  
15 to get to that point of the intersection, to go from  
16 northbound at a stop to the intersection.

17 When you add the four seconds, the one second  
18 all red, the five seconds, you got about 10 seconds.  
19 Which, as we stand here, is not a lot of time, but  
20 when we are driving vehicles everything is in  
21 seconds. We don't act in minutes when we are talking  
22 about vehicles being driven. And 10 seconds at that  
23 speed gets you out to 683 feet back when that light  
24 turns yellow. And these lights, one is hanging right  
25 above the intersection, visible for at least a mile

1 according to Vincent Miels. Straight, level roadway,  
2 clear night. You can see it a mile away.

3 So a truck in this position at 683 feet is  
4 going to see that light turn yellow. Consider how  
5 long that is. Put that in perspective. That is over  
6 two football fields away the light is yellow. And  
7 that's a dilemma zone? That's a point two football  
8 fields away, where a driver wouldn't say, "I've got  
9 to stop for this, maybe I can beat it?" Two football  
10 fields? More. Even give the defendant some benefit  
11 of the doubt. We are still talking five, six hundred  
12 feet when that light goes yellow. If she is being  
13 inattentive and didn't see it turn yellow, even if we  
14 are at this point when the light has now turned red,  
15 344 feet at the start of the all red, still a  
16 football field away, plus. She still has time to  
17 stop. 255 feet, according to Trooper Walerius, who  
18 is an accident reconstructionist and commercial  
19 vehicle inspector. Mr. Daubert said he'd probably  
20 give it more like 288. In any case, still sufficient  
21 time to stop, to make that choice.

22 And that's the problem here. It's not just  
23 somebody who is inattentive and slams on the brakes  
24 and still can't avoid the collision. This is  
25 somebody, whether she was inattentive or just didn't

1 care, made a conscious decision and sped up, because  
2 that's what she told everybody, tried to beat the  
3 light. And that's what makes this very great  
4 negligence, not just inattentive, and I did what I  
5 could to avoid. It's no care at all.

6 Now, the defense might say, "Well, it could  
7 have been worse. She could have been going a hundred  
8 miles an hour, she could have had alcohol or drugs in  
9 her system," all of which is true. It could have  
10 been worse, you can always imagine some scenario.  
11 That does not make gross negligence any less present  
12 in this case. Just because there might be a worse  
13 case scenario, it's just a worse case scenario of  
14 gross negligence. What you look at is, did she  
15 exercise any care? And she did not.

16 The defendant did not care to get licensed,  
17 the defendant did not care to do the safety  
18 inspections, the defendant did not care to reduce her  
19 speed approaching this intersection, regardless of  
20 the lights, the defendant did not care to reduce her  
21 speed when the light turned yellow, the defendant did  
22 not exercise care in reducing speed or attempting to  
23 brake when the light turned red, the defendant did  
24 not attempt to steer away from the accident. In  
25 fact, she did exactly the opposite. Trooper Walerius

1 told you the point of impact is left of center. So,  
2 if anything, the defendant heading in the straight  
3 ahead lane would have missed the Geo Metro. She did  
4 not go to the right, she did not take the ditch. She  
5 chose the path and the path went right into the side,  
6 as if she were aiming that vehicle.

7 So she did not care to steer away from the  
8 Geo Metro. She did not care to brake until four feet  
9 before, when she was right on top of the Geo Metro.  
10 She did not, finally, care enough to even warn that  
11 she was coming, did not blow her horn.

12 There's not even scant care here. Everything  
13 the defendant did is an example of negligence. And  
14 the lack of even scant care makes this gross  
15 negligence. It is the absolute absurdity of trying  
16 to beat a light when you are over one or even two  
17 football fields away, at 11 o'clock at night that is  
18 absolutely ridiculous and absolutely gross,  
19 absolutely great in negligence.

20 A person of ordinary care will at least try  
21 and avoid the accident, will do something if they  
22 have been negligent, careless, inattentive, do  
23 something. The defendant did not. The conclusion  
24 you have to reach from the evidence in this case is  
25 that the defendant took risks. She took no care.

1                   And for all the calculations and all the  
2                   measurements and all the observations you have heard  
3                   about, let's not forget this case is about Heather  
4                   Marie Olson and her unborn child, who were killed  
5                   because of this, tragically, senselessly, and all  
6                   because of the way somebody decided to drive their  
7                   truck, decided to drive their truck, made conscious  
8                   decisions to go through that intersection.

9                   In criminal cases we often talk about acts  
10                  that are intentional. It's not the requirement here.  
11                  This is not an intentional type crime. We punish  
12                  people who fire guns and expel small metal bullets at  
13                  about 1,000 feet per second that kill somebody. What  
14                  we have here is a defendant who took a 40-ton metal  
15                  bullet and drove it down the road. And she may not  
16                  have intended to kill Heather Olson, but her extreme  
17                  lack of care made the result the same. Because of  
18                  that, her conduct is a crime, one punishable by the  
19                  State, and one in a second count of which to find the  
20                  defendant guilty. Thank you.

21                  MR. SHEPPARD: If it please the Court,  
22                  Counsel:

23                  As I indicated, this is a very close case,  
24                  not because the facts are hotly disputed, although  
25                  they are, but because the issue of negligent versus

1 gross negligence, that's a very difficult thing to  
2 explain. Counsel has made a very good case that she  
3 was negligent, that she was at fault, the accident  
4 was probably Roxanne's fault. That's not in dispute.  
5 The true dispute is over gross negligence. What  
6 conduct of hers, prior driving conduct of hers prior  
7 to the accident, shows that she was extremely, very  
8 greatly, egregiously negligent? Not whether or not  
9 she wasn't using reasonable care. That's negligence.

10 A tragic accident happened, a mistake was  
11 made, but the issue is: prior to the accident was  
12 this defendant acting in a manner so inconsistent  
13 with our standards of care that it constitutes gross  
14 negligence? Not just that she wasn't doing a variety  
15 of things that counsel has indicated, but that she  
16 was so far exceeding her standard of care  
17 requirements that she is acting without any care.

18 And that simply isn't here, not by her  
19 driving conduct. It's here by pessimism, by  
20 interpreting an ambiguous statement of "I was trying  
21 to beat the light," implying somehow that there was  
22 intent to run through this light no matter what.  
23 That isn't what the evidence showed.

24 The evidence shows that there is an area here  
25 where all commercial trucks are in a dilemma where



1 they cannot stop in the perceived amount of time that  
2 they have. And that is based upon assumption upon  
3 assumption in this particular case.

4 I'm sorry, but Officer Vang said that he was  
5 assuming the car was stopping. It's in Exhibit 38,  
6 his statement -- 39, excuse me, page 3. That will go  
7 into the jury room with you. Please review that.  
8 And it's crucial, because the time from here to here  
9 (indicating) is based upon a full stop. When your  
10 car comes to an entire stop, the law of inertia  
11 requires more time to get going. He asked, "What  
12 else could have triggered her going out?" Very  
13 obvious thing. Seeing the yellow lights from the  
14 side, rolling along a little bit, anticipating. That  
15 shortens the length of time here to the point of  
16 where this red changes.

17 You may recall Trooper Walerius said, "If it  
18 isn't two seconds, it's 75 percent; if it's one  
19 second, then it would be half," and, yes, he has the  
20 one second on here. But the assumption this time to  
21 get out here is back to here (indicating). If that  
22 time is shorter than the calculation, it's off, it's  
23 not as much red as has been indicated.

24 More importantly, the same is true for the  
25 yellow. There is a point out there at which a driver

1 of a heavier truck doesn't know what to do. One,  
2 two, wrong decision, accident. It happened that  
3 fast. So you are going to fault her for one, two,  
4 wrong decision, accident happened? We are sitting  
5 here with 20/20 perfect hindsight.

6 "You should have steered to the right."  
7 Where is that coming from? Obviously, there is an  
8 accident. It moved, she made the wrong choice,  
9 perhaps, if 20/20 hindsight as to which way to go.  
10 But if you have got a vehicle coming from your side,  
11 you're gonna react and turn that way, you're not  
12 gonna react and turn back into the car as you are  
13 perceiving it. You can't expect somebody to do that.  
14 That's not being reasonable.

15 And even more importantly, it's from not only  
16 reasonable care, but we are off here with gross care.  
17 We aren't even talking about reasonable care, we're  
18 talking about the 180 degree opposite, being  
19 extremely inappropriate. That's not involved with  
20 turning left or right. A snap, momentarily,  
21 split-second decision had to be made, a reaction.  
22 You cannot assess somebody, penalize them on the  
23 basis of 20/20 hindsight. Obviously, the accident  
24 happened, very tragic accident.

25 Many things in this case are not what this

1 case is about, but what it's not about. We're not  
2 over here talking about drinking and driving and the  
3 carnage that happens on our highways every day. We  
4 are not talking about excessive speed. If Mr.  
5 Cahill's assumption is right, most trucks would  
6 probably drive down the road 35 miles an hour,  
7 because we all know they're lethal, all cars are  
8 lethal.

9 Some other things this case is not about that  
10 we seem to continuously go back and over and through  
11 is the sheet and the picture of the clevis pin  
12 missing and faulty brakes. Faulty brakes did not  
13 cause this accident. It's so irrelevant that some  
14 things don't even matter. We all know, obviously,  
15 stenciling the name of a city on the side of the door  
16 has nothing to do with this accident. Paperwork has  
17 nothing to do with this accident, really.

18 The conduct of the driver prior to the  
19 accident is not so wholly out of the range of  
20 reasonable care. It's not so extreme over here  
21 (indicating), very great, extreme, egregious. That's  
22 the conduct we are trying to penalize exceptionally  
23 poor driving for. Not every fatal accident has  
24 extreme negligence. Accidents happen. We lose over  
25 50,000 people a year, I believe, on the highways. We

1 don't have 50,000 gross negligence vehicular homicide  
2 cases each year.

3 I don't know the exact point down here  
4 (indicating), but this scale shows you 60 feet. Mr.  
5 Miels is down here a quarter of a mile away. He  
6 didn't testify that he saw the victim's car go out  
7 into the intersection; he said he saw a flash of  
8 lights, there was an accident, the light appeared red  
9 to him.

10 He doesn't see Officer Vang sitting down  
11 here, even though there is a large pool. He doesn't  
12 see a vehicle that somehow we have mysteriously lost  
13 in this whole case from the start of opening  
14 arguments to now. In fact, if Officer Vang is  
15 correct, that there was a car here, that explains  
16 some of this movement to the left.

17 You also heard some testimony there was a  
18 manhole cover and some ruts in this area that's  
19 causing the drivers to move up a little bit to the  
20 north.

21 MR. CAHILL: Object. Misstates the record.

22 THE COURT: Overruled. The jury can remember  
23 the record as they remember it.

24 MR. SHEPPARD: Counsel indicates that there  
25 is evidence of not taking any care. I didn't hear

1           that, I'm sorry, anywheres through any of the  
2           testimony. I didn't hear one person say she wasn't  
3           taking any care. That's what gross negligence is,  
4           without scant care. Not the, yeah, things may have  
5           been her fault. That's to be decided a different  
6           day. She may be held accountable in a civil action.  
7           We are over here dealing without any care, extremely  
8           inappropriate conduct. It's not there. She's doing  
9           a job.

10                        There's a very ambiguous statement in this  
11           supposed comment to the officer, "I was just trying  
12           to beat the light." You indicated -- or heard  
13           testimony that that wasn't the comment. The comment  
14           was, "I thought I had time to get through. I  
15           couldn't stop." Now we have somehow implied back an  
16           intent to go through at any cost. When we use that  
17           phrase, you can either be pessimistic with it or  
18           optimistic with it.

19                        Ultimately, the biggest red herring in this  
20           case is the brakes. Time and time again, one out of  
21           14 has problems but the brakes are defective. That  
22           simply did not cause this accident. This accident  
23           was caused by momentarily inattentiveness, making the  
24           wrong decision, thinking that I have time to go  
25           through that intersection.

1 I'm not asking that you find -- I don't have  
2 to prove that the defendant isn't responsible for  
3 this accident. The issue, as I have said time and  
4 time again, is over here (indicating): was her  
5 driving conduct prior to this accident so extremely  
6 egregious? There is simply no evidence of that.  
7 Tragedy has happened. Not asking that it be  
8 forgotten, I'm just asking that there be no penalty  
9 attached to gross negligence, to extreme behavior.

10 The reconstructionist notes other people are  
11 having problems with this intersection. It's right  
12 there. Yes, I suppose maybe I overemphasized the  
13 fact that the utility poles block the outside lights.  
14 But you can see right there that that red light is  
15 not visible in this perspective. And if you move one  
16 way or the other, get up in a truck, yes, it will  
17 switch around at various times. But there are  
18 momentary vision clutter where something happens so  
19 we don't immediately see that yellow light. And even  
20 if you immediately see that yellow light, you still  
21 cannot necessarily know instantaneously if you are  
22 going to make it through that intersection or not.

23 We have a dilemma. That's what this case is  
24 about, for faulting somebody, one, two, wrong  
25 decision. That fast. That's not acting totally

1 gross out here (indicating). That's saying I was  
2 wrong, I made a mistake. That's what's happened in  
3 this case, a mistake was made. The driving conduct  
4 does not fit those types of things we penalize people  
5 for driving. There was no excessive speed involved,  
6 there was no alcohol involved.

7 I thank you for your attention.

8 THE COURT: Members of the jury, we are going  
9 to take a 15 minute break before I instruct you on  
10 the law. So I would ask that you be back in the  
11 deliberation room in 753 by 3:45.

12 (The following record was made in open court  
13 out of the presence of the jury.)

14 THE COURT: All right. We are back on the  
15 record outside the presence of the jury. There was a  
16 question asked by Mr. Sheppard of his expert, and I  
17 think I have it right: was she going too fast for  
18 the conditions? And there was an objection by Mr.  
19 Cahill to that question. And the basis, Mr. Cahill?

20 MR. CAHILL: Called for a legal conclusion,  
21 Your Honor.

22 THE COURT: And I sustained that objection on  
23 the basis that there had been no foundation laid as  
24 to what the conditions were. And specifically, in my  
25 mind it's because we don't know what the conditions

1           were, since there was no testimony from the  
2           defendant.

3                     Mr. Sheppard.

4                     MR. SHEPPARD: Your Honor, if I recall  
5           correctly, the question posed was: was there any  
6           physical evidence that she was acting extremely  
7           inappropriately? And I guess I would like to briefly  
8           recall Mr. Daubert to answer that question as an  
9           offer of proof for appeal purposes at this time.

10                    THE COURT: Well, my understanding is that  
11           was the second question that you asked.

12                    MR. SHEPPARD: Oh, I'm sorry. You are  
13           probably right.

14                    THE COURT: And that question was also  
15           sustained on the basis that Mr. Daubert has no  
16           information as to what the situation was, again,  
17           unless he was relying on things the defendant had  
18           told him.

19                    Okay. So if you want to do an offer of  
20           proof, you can do an offer of proof.

21                    MR. SHEPPARD: Thank you.

22                    Your Honor, may I inquire of the court  
23           reporter if it would be possible at this point to go  
24           back and actually read the two questions at issue?

25                    THE COURT: Well, do you -- okay. My



1 understanding is, and do you disagree, the first  
2 question was: was she going too fast for conditions?

3 MR. SHEPPARD: Quite frankly, Your Honor, I'm  
4 not sure about that one. The second one I'm a little  
5 bit more sure about. That one is causing me --

6 THE COURT: All right. Do you want to  
7 rephrase your second question then?

8 MR. SHEPPARD: I would like the second -- no.  
9 I believe that you have correctly stated the second  
10 question I have. The first question, I'm not so sure  
11 I phrased it the same way the Court has, and I'm  
12 wondering if it would be possible for the court  
13 reporter to read that question back.

14 THE COURT: Well, what do you think the  
15 question is? And are you doing the first question or  
16 the second question?

17 MR. SHEPPARD: The first. I want to do both.

18 THE COURT: And what do you think the first  
19 question was?

20 MR. SHEPPARD: I'm just not sure at this  
21 point, Your Honor.

22 THE REPORTER: (Reading) "Question. Mr.  
23 Daubert, do you feel that the defendant was violating  
24 that speed due care requirement?"

25 "Question. Is there any physical evidence

1 that you are aware of, having reviewed these  
2 materials, that would indicate that the defendant was  
3 acting extremely inappropriate?"

4 THE COURT: All right.

5 MR. SHEPPARD: Your Honor, I would ask that  
6 Mr. Daubert return to the stand and answer those two  
7 questions.

8 THE COURT: Mr. Daubert.

9

- - -

10

DAVID DAUBERT

11 having been previously duly sworn, resumed the stand  
12 and testified further upon his oath as follows:

13

EXAMINATION

14 BY MR. SHEPPARD:

15 Q. Do you recall the first question now?

16 A. Concerning the speed and the due care of the speed  
17 ordinance, statute.

18 I don't think so. As drivers we go through  
19 about 75,000 intersections a year each. If we slowed  
20 down for every one, or even any fraction of those, we  
21 would be causing a terrible congestion problem and  
22 safety problem.

23 Q. And as to the second question, after reviewing the  
24 materials, was there any physical evidence that the  
25 defendant was acting extremely inappropriately?

1 A. No.

2 MR. SHEPPARD: Thank you.

3 THE COURT: All right. Thank you.

4 THE WITNESS: Yes, ma'am.

5 (A recess was taken.)

6 THE COURT: Thank you. Please be seated.

7 Members of the jury:

8 It is your duty to decide the questions of  
9 fact in this case. It is my duty to give you the  
10 rules of law you must apply in arriving at your  
11 verdict.

12 You do not need to take notes on these  
13 instructions because you will receive a copy of them  
14 to take back with you in the deliberation room.

15 You must follow and apply the rules of law as  
16 I give them to you, even if you believe the law is or  
17 should be different. Deciding questions of fact is  
18 your exclusive responsibility. In doing so, you must  
19 consider all the evidence you have heard and seen in  
20 this trial and you must disregard anything you may  
21 have heard or seen elsewhere about this case.

22 I have not by these instructions nor by any  
23 ruling or expression during the trial intended to  
24 indicate my opinion regarding the facts or the  
25 outcome of this case. If I have said or done

1 anything which would seem to indicate such an  
2 opinion, you are to disregard it.

3 The defendant is presumed innocent of the  
4 charge made and that presumption abides with her  
5 unless and until she has been proved guilty beyond a  
6 reasonable doubt. That the defendant is on trial,  
7 has been arrested, and has been brought before the  
8 Court by the ordinary processes of the law should not  
9 be considered by you as in any way suggesting guilt.  
10 The burden of proving guilt is on the State. The  
11 defendant does not have to prove innocence.

12 Proof beyond a reasonable doubt is such proof  
13 as ordinarily prudent men and women would act upon in  
14 their most important affairs. A reasonable doubt is  
15 a doubt based upon reason and common sense. It does  
16 not mean a fanciful or capricious doubt, nor does it  
17 mean beyond all possibility of doubt.

18 In order for you to return a verdict, whether  
19 guilty or not guilty, each juror must agree with the  
20 verdict. Your verdict must be unanimous. You should  
21 discuss the case with one another and deliberate with  
22 a view to reaching agreement, if you can do so  
23 without violence to your individual judgment. You  
24 should decide the case for yourself, but only after  
25 you have discussed the case with your fellow jurors

1           and have carefully considered their views. You  
2           should not hesitate to reexamine your views and  
3           change your opinion if you become convinced they are  
4           erroneous. But you should not surrender your honest  
5           opinion simply because other jurors disagree or  
6           merely in order to reach a verdict.

7                     A fact may be proved by either direct or  
8           circumstantial evidence or by both. The law does not  
9           prefer one form of evidence over the other. A fact  
10          is proved by direct evidence when, for example, it is  
11          proved by witnesses who testify to what they saw,  
12          heard or experienced or by physical evidence of the  
13          fact itself. A fact is proved by circumstantial  
14          evidence when its existence can be reasonably  
15          inferred from other facts proved in the case.

16                    During this trial I have ruled on objections  
17          to certain testimony and exhibits. You must not  
18          concern yourself with the reasons for the rulings  
19          since they are controlled by the rules of law. By  
20          receiving evidence to which objection was made, I did  
21          not intend to indicate the weight to be given such  
22          evidence. You are not to speculate as to possible  
23          answers to questions which I did not require to be  
24          answered. You are to disregard all evidence that I  
25          have ordered stricken or have told you to disregard.

1                   You must consider these instructions as a  
2 whole and regard each instruction in light of all the  
3 others. The order in which the instructions are  
4 given is of no significance. You are free to  
5 consider the issues in any order you wish. I have  
6 not intended by anything I have said to indicate that  
7 you must consider the issues in any particular order.

8                   You have been allowed to take notes during  
9 the course of the trial and you may take those notes  
10 with you to the jury room. You should not consider  
11 these notes binding or conclusive, whether they are  
12 your notes or those of another juror. The notes  
13 should be used as an aid to your memory and not as a  
14 substitute for it. You should not give greater  
15 weight to a particular bit of evidence solely because  
16 it has been reduced to writing. I want to make clear  
17 to you that it is your recollection of the evidence  
18 which should control and you should disregard  
19 anything contrary to your recollection which may  
20 appear from your own notes or those of another juror.

21                   Attorneys are officers of the Court. It is  
22 their duty to make such objections as they deem  
23 proper and to argue fully their client's cause.  
24 However, the arguments or other remarks of an  
25 attorney, are not evidence in the case. If the

1 attorneys have made or if I have made or should make  
2 any statement as to what the evidence is which  
3 differs from your recollection of the evidence, then  
4 you should disregard the statement and rely solely on  
5 your own memory. If an attorney's argument contains  
6 any statement of the law which differs from the law  
7 which I give you, you should disregard the statement.

8 You are the sole judges of whether a witness  
9 is to be believed and of the weight to be given to  
10 the testimony of each. There are no hard and fast  
11 rules to guide you in this respect. In determining  
12 the believability and weight you should take into  
13 consideration as to the witnesses the following:

14 Their interest or lack of interest in the  
15 outcome of the case;

16 Their relationship to the parties;

17 Their ability and opportunity to know,  
18 remember and relate the facts;

19 Their manner and appearance;

20 Their age and experience;

21 Their frankness and sincerity or lack  
22 thereof;

23 The reasonableness or unreasonableness of  
24 their testimony in light of all the other evidence in  
25 the case;

1           Any impeachment of their testimony, and any  
2 other factors that bear on believability and weight.  
3 You should in the last analysis rely upon your own  
4 experience, good judgment and common sense.

5           A witness who has special training, education  
6 or experience in a particular science, occupation or  
7 calling is allowed to express an opinion as to  
8 certain facts. In determining the believability and  
9 the weight to be given such opinion evidence, you may  
10 consider, among other things:

11           The education, training, experience,  
12 knowledge and ability of the witness;

13           The reasons given for the opinion;

14           The sources of the information;

15           And factors already given you for evaluating  
16 the testimony of a witness.

17           Such opinion testimony is entitled to neither  
18 more nor less consideration by you than any other  
19 evidence. You are to judge its believability and  
20 weight in the same manner as you will do for  
21 evaluation of other testimony.

22           In deciding the believability and weight to  
23 be given the testimony of a witness, you may consider  
24 evidence of a statement by or conduct of the witness  
25 on some prior occasion which is inconsistent with



1 present testimony. Evidence of any prior  
2 inconsistent statement should be considered only for  
3 the purpose of testing the believability and weight  
4 of the witness' testimony.

5 The State must convince you by evidence  
6 beyond a reasonable doubt that defendant is guilty of  
7 the crime charged. Defendant has no obligation to  
8 prove herself innocent. Defendant has the privilege  
9 not to testify in the defendant's own defense. This  
10 privilege is guaranteed by the federal and state  
11 constitutions. You should not draw any inference  
12 from the fact that the defendant has not testified in  
13 this case.

14 Criminal vehicular homicide, Count I,  
15 defined.

16 The statutes of Minnesota provide that  
17 whoever operates a motor vehicle in a grossly  
18 negligent manner and thereby causes the death of a  
19 human being is guilty of criminal vehicular homicide.

20 The elements of criminal vehicular homicide  
21 in Count I are:

22 First, the death of Heather Marie Olson must  
23 be proven.

24 Second, defendant caused the death of Heather  
25 Marie Olson by operating a motor vehicle in a grossly

1 negligent manner. "Negligence" means to act without  
2 using ordinary or reasonable care. "Grossly  
3 negligent" means with very great negligence or  
4 without even scant care.

5 A motor vehicle is a self-propelled device  
6 for moving persons or property or pulling implements  
7 from one place to another, whether the device is  
8 operated on land, rails, water, or in the air.

9 Third, defendant's act took place on or about  
10 October 2, 1997, in Hennepin County.

11 If you find that each of these three elements  
12 has been proved beyond a reasonable doubt, defendant  
13 is guilty of criminal vehicular homicide. If you  
14 find that any of these elements has not been so  
15 proved, defendant is not guilty.

16 Count II: Criminal Vehicular Operation  
17 resulting in death of an unborn child - defined.

18 The statutes of Minnesota provide that  
19 whoever operates a motor vehicle in a grossly  
20 negligent manner and thereby causes the death of an  
21 unborn child is guilty of criminal vehicular  
22 homicide.

23 The elements of Criminal Vehicular Operation  
24 in Count II are:

25 First, the death of an unborn child must be

1 proven. An unborn child is the unborn offspring of a  
2 human being conceived but not yet born.

3 Second, defendant caused the death of the  
4 unborn child of Heather Marie Olson by operating a  
5 motor vehicle in a grossly negligent manner.

6 "Negligence" means to act without using ordinary or  
7 reasonable care. "Grossly negligent" means with very  
8 great negligence or without even scant care.

9 A motor vehicle is a self-propelled device  
10 for moving persons or property or pulling implements  
11 from one place to another, whether the device is  
12 operated on land, rails, water, or in the air.

13 Third, defendant's act took place on or about  
14 October 2, 1997, in Hennepin County.

15 If you find that each of these three elements  
16 has been proved beyond a reasonable doubt, defendant  
17 is guilty of criminal vehicular operation. If you  
18 find that any of these elements has not been so  
19 proved, defendant is not guilty.

20 In your determination of the facts, you are  
21 not to consider any possible penalties which may  
22 attach. This consideration is solely and exclusively  
23 the responsibility of the judge. Your sole duty is  
24 to determine whether the State has proved the guilt  
25 of the defendant beyond a reasonable doubt.

1           To the charges the defendant has entered a  
2 plea of not guilty.

3           Four forms of verdict have been prepared for  
4 your use. These forms are complete in themselves.  
5 There is nothing for you to add or subtract. When  
6 you reach your verdict, have the proper verdict form  
7 signed and dated by your foreperson and report back  
8 to the Court.

9           I will now read the verdict forms to you.  
10 The fact that one or the other of the verdicts comes  
11 first is mere chance and indicates nothing.

12           The first verdict form reads:

13           "State of Minnesota, County of Hennepin,  
14 District Court, Fourth Judicial District.

15           "State of Minnesota, plaintiff, versus  
16 Roxanne Marie Price, defendant. Verdict, Court File  
17 No. 97098217.

18           "We, the jury, being duly sworn, find the  
19 defendant guilty of Count I: Criminal Vehicular  
20 Homicide." There is a line for the foreperson to  
21 sign, "dated: at," and there is a space for the date  
22 and time, "Minneapolis, Minnesota."

23           The second verdict form reads with the exact  
24 same heading, "We, the jury, being duly sworn, find  
25 the defendant not guilty of Count I: Criminal

1           Vehicular Homicide." There is a space for the  
2           foreperson to sign and a space for the date and time  
3           "at Minneapolis, Minnesota."

4           The third verdict form has the exact same  
5           heading and reads: "We, the jury, being duly sworn,  
6           find the defendant guilty of Count II: Criminal  
7           Vehicular Operation resulting in the death of the  
8           unborn child of Heather Olson," a space for the  
9           foreperson to sign, dated, the time, "at Minneapolis,  
10          Minnesota."

11          And the fourth verdict form reads, with the  
12          exact same heading, "We the jury, being duly sworn,  
13          find the defendant not guilty of Count II: Criminal  
14          Vehicular Operation resulting in the death of the  
15          unborn child of Heather Olson," a space for the  
16          foreperson to sign, "Dated:" the time, "at  
17          Minneapolis, Minnesota."

18          Each of you must decide the issues for  
19          yourself, but you should do so only after conferring  
20          and discussing the case with your fellow jurors. It  
21          is rarely productive for a juror upon entering the  
22          jury room to make an emphatic expression of his or  
23          her own opinion on the case and to announce a  
24          determination to stand for a certain verdict. When  
25          one does it at the outset, one's sense of pride may

1 be aroused and one may hesitate to reside from an  
2 announced position, even when shown that it is wrong.

3 The final test of the quality of your  
4 services will lie in the verdict which you return to  
5 the Court and not in the opinions any of you may hold  
6 at this moment.

7 Remember, you are not partisans or advocates  
8 in this matter but, rather, you are judges of the  
9 facts.

10 And, counsel, do either of you wish to call  
11 the Court's attention to any errors, omissions or  
12 corrections?

13 MR. CAHILL: No, Your Honor.

14 MR. SHEPPARD: Not on behalf of the defense.

15 THE COURT: Ms. Anderson, you are the  
16 randomly designated alternate and, as such, you will  
17 not be deliberating with the jurors. I would ask,  
18 however, that you take a seat in the gallery and I  
19 would be more than willing to talk to you and find  
20 out if you need to report downstairs. All right. If  
21 you would take a seat at this time.

22 All right. And if the deputy would come  
23 forward to be sworn.

24 (The deputy was sworn by the clerk.)

25 THE COURT: All right. Members of the jury,

1 when you have arrived at a verdict, you may call that  
2 to the attention of the deputy and he will call all  
3 of us back to court for your decision. All of the  
4 verdict forms should be given to the deputy at the  
5 conclusion of your deliberations.

6 You will be able to follow the deputy at this  
7 time to the jury room for your deliberations. The  
8 first thing you should do is pick a foreperson and  
9 begin your deliberations. Your deliberations will  
10 adjourn today at 4:30 and you will be allowed to go  
11 home and I wanted to give you some orders in regards  
12 to that.

13 You are not to talk about the case with  
14 anyone or among yourselves until you are altogether  
15 again tomorrow morning. You are not to go to the  
16 scene and you are not to investigate on your own. I  
17 am ordering you to come back at 9:00 o'clock tomorrow  
18 to continue your deliberations, and you are to go to  
19 the jury room at 753 where you have been going now  
20 for the last couple days. And you are not to  
21 deliberate until you are all present tomorrow morning  
22 at 9:00 o'clock. And we will try to have coffee and  
23 pop for you while you are deliberating.

24 All right. You can follow the deputy.

25 (The jury commenced its deliberations at 4:10

1 p.m., Monday, September 28, 1998.)

2 THE COURT: All right. Mr. Sheppard, if you  
3 could leave some numbers with Ms. Ludwig.

4 MR. SHEPPARD: I have already done so, Your  
5 Honor.

6 - - -

7 (The proceedings were recessed at 4:10 p.m.,  
8 Monday, September 28, 1999.)

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Tuesday afternoon session  
September 29, 1999

- - -

THE COURT: Thank you. Please be seated and  
good afternoon.

Members of the jury, have you reached a  
verdict?

THE FOREPERSON: We have.

THE COURT: And would you please hand your  
verdict forms to the bailiff.

Members of the jury, you will now hear your  
verdict as it will be recorded in the records of the  
Hennepin County District Court.

THE CLERK: "State of Minnesota, District  
Court, County of Hennepin, Fourth Judicial District.

"State of Minnesota, plaintiff, versus  
Roxanne Marie Price, defendant. Verdict, Court File  
No. 97098217.

"We, the jury, being duly sworn, find the  
defendant guilty of Count I: Criminal Vehicular  
Homicide." Signed "David P. Young, foreperson.  
Dated: 9/29/98 at 11:24 o'clock at Minneapolis,  
Minnesota.

"State of Minnesota, District Court, County  
of Hennepin, Fourth Judicial District.

1 "State of Minnesota, plaintiff, versus  
2 Roxanne Marie Price, defendant. Verdict, Court File  
3 No. 97098217.

4 "We, the jury, being duly sworn, find the  
5 defendant guilty of Count II: Criminal Vehicular  
6 Operation resulting in the death of the unborn child  
7 of Heather Olson." Signed, "David P. Young,  
8 Foreperson. Dated: 9/29/98 at 11:25 o'clock at  
9 Minneapolis, Minnesota."

10 Members of the jury, is this your true and  
11 correct verdict?

12 THE JURORS: Yes.

13 THE CLERK: So say you one, so say you all?

14 THE JURORS: Yes.

15 THE COURT: Mr. Sheppard, did you want the  
16 jury polled?

17 MR. SHEPPARD: Yes, Your Honor.

18 THE CLERK: Ms. Belter, is this your true  
19 verdict?

20 JUROR BELTER: Yes.

21 THE CLERK: Mr. Hanstad, is this your true  
22 verdict?

23 JUROR HANSTAD: Yes.

24 THE CLERK: Mr. Sheehan, is this your true  
25 verdict?

1 JUROR SHEEHAN: Yes.

2 THE CLERK: Mr. -- excuse me. Ms.

3 Muchlinski, is this your true and correct verdict?

4 JUROR MUCHLINSKI: Yes.

5 THE CLERK: Ms. Dunagan, is this your true  
6 and correct verdict?

7 JUROR DUNAGAN: Yes.

8 THE CLERK: Ms. Olsen, is this your true and  
9 correct verdict?

10 JUROR OLSEN: Yes.

11 THE CLERK: Mr. Young, is this your true and  
12 correct verdict?

13 JUROR YOUNG: Yes.

14 THE CLERK: Mr. Nelson, is this your true and  
15 correct verdict?

16 JUROR NELSON: Yes.

17 THE CLERK: Mr. Allenburg, is this your true  
18 and correct verdict?

19 JUROR ALLENBURG: Yes.

20 THE CLERK: Ms. Antonucchi, is this your true  
21 and correct verdict?

22 JUROR ANTONUCCHI: Yes.

23 THE CLERK: Ms. Isaacson, is this your true  
24 and correct verdict?

25 JUROR ISAACSON: Yes.

1                   THE CLERK: Mr. Tollefson, is this your true  
2                   and correct verdict?

3                   JUROR TOLLEFSON: Yes.

4                   THE COURT: Members of the jury, at this time  
5                   I would like to thank you for the time and patience  
6                   you have given to this very difficult case. Our  
7                   system of justice is dependent on the willing and  
8                   diligent participation of citizens such as yourself.  
9                   I hope you have found your jury service on this case  
10                  to be a meaningful one and a positive one.

11                  I'd like to say this concludes your jury  
12                  duty, I hope it does, but the jury office does want  
13                  you to report downstairs. I want you to know that I  
14                  will be sending out a juror evaluation form and I  
15                  would ask if you could fill that out and please put  
16                  on it any comments that you may have about the  
17                  service you have performed or about any procedures  
18                  that you think could be improved. We have had more  
19                  delays in this case than we normally do in other  
20                  cases, and I am sure that caused you some  
21                  frustration.

22                  I am also sure that this case has taken an  
23                  emotional toll on you, and I hope maybe some of you  
24                  have exchanged phone numbers and can at least be able  
25                  to talk to someone else who has gone through the same

1 experience, if you find that you need to do that.

2 And so at this time you are discharged from  
3 this case. You do need to report downstairs and  
4 thank you very much for your service.

5 (The following record was made in open court  
6 out of the presence of the jury.)

7 THE COURT: All right. And at this time I  
8 will order a presentence investigation and a  
9 Sentencing Guidelines work sheet to be prepared.

10 Mr. Cahill.

11 MR. CAHILL: Your Honor, the State would  
12 request that bail be revoked, that defendant be taken  
13 into custody. These are commit cases and the  
14 defendant is not a resident of the state, she is a  
15 resident of North Dakota and initially fought  
16 extradition until the eleventh hour when she finally  
17 turned herself in in this state, and it would be  
18 appropriate that she be taken into custody

19 THE COURT: Mr. Sheppard.

20 MR. SHEPPARD: Your Honor, I believe it's  
21 erroneous to say that she fought extradition. I was  
22 not counsel at that time. There was a hearing at  
23 which she agreed to come down and she did come down  
24 and voluntarily surrender herself. She has signed a  
25 waiver of extradition. I would request bail be

1 continued until the time of the sentencing.

2 THE COURT: I did handle this matter at the  
3 first appearance, and at that time Ms. Price did sign  
4 a waiver of extradition. She has complied with all  
5 the conditions of her release.

6 Those conditions remain the same, Ms. Price,  
7 and I am not going to take you into custody at this  
8 time pending the sentencings.

9 And can we pick a date?

10 THE CLERK: Week of November 9th.

11 MR. CAHILL: That's fine.

12 THE CLERK: Let me just double-check. Let's  
13 take it into the next week just to make sure.  
14 Monday, Tuesday, Wednesday at 9.

15 MR. CAHILL: Wednesday would be better.

16 MR. SHEPPARD: This far in advance, I will  
17 adjust my schedule.

18 THE CLERK: I'm sorry?

19 MR. SHEPPARD: This far in advance I'll  
20 adjust my schedule to whatever time that you have.

21 THE CLERK: 9 o'clock or 1:30?

22 MR. CAHILL: 1:30 would be my preference

23 THE CLERK: Mr. Sheppard?

24 MR. SHEPPARD: That's fine.

25 THE COURT: And what date are we talking

1 about?

2 THE CLERK: November 18th at 1:30.

3 THE COURT: November 18th at 1:30. While I  
4 am not taking Ms. Price into custody at this time,  
5 Ms. Price should be prepared to have her -- all of  
6 the arrangements made for that possibility at the  
7 time of the sentencing.

8 Thank you.

9 MR. CAHILL: Thank you, Your Honor.

10 THE COURT: Mr. Sheppard, if you would escort  
11 Ms. Price into the back.

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13 (The proceedings were concluded at 1:37 p.m.,  
14 Tuesday, September 29, 1998.)

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