

1 Proceedings

2 THE WITNESS: 1143, 177th Street.

3 DIRECT EXAMINATION

4 BY MR. RUBINOWITZ:

5 MR. RUBINOWITZ: May I, Judge?

6 THE COURT: You may proceed.

7 Q. I ask you to keep your voice up if you would.
8 Any way I recognize the microphone is in front of you.
9 Will you do that, sir?

10 A. Yes.

11 Q. Will you answer my questions directly if you
12 could?

13 A. Yes.

14 Q. Mr. Brooms, at the time of this accident you
15 worked for the Department of Transportation, correct?

16 A. Yes.

17 Q. And you have worked there for a number of
18 years, true?

19 A. Yes.

20 Q. How many years?

21 A. At the time approximately five.

22 Q. You still work for them, correct?

23 A. Yes.

24 Q. Is your job supervisor now?

25 A. Superintendent.

26 Q. Back at the time of the accident, were you a

1 Brooms-Plaintiff-Direct

2 superintendent as well?

3 A. Supervisor.

4 Q. And as a supervisor, how long have you held
5 that position?

6 A. About a year and a half.

7 Q. During that year and a half, did you have
8 other people that worked under you?

9 A. Yes.

10 Q. And were you working with signs and signage
11 for the City of New York?

12 A. Yes.

13 Q. With respect to your specific duties and
14 responsibility, give us an overview of what that
15 included?

16 A. We maintained and installed street signs, all
17 street signs, stop signs, one ways.

18 Q. And one of the things that you would do at
19 the time of the accident was you would actually check
20 on the work being done by those who worked for the
21 Department of Transportation, correct?

22 A. Yes.

23 Q. And would you make sure that the job was done
24 properly, right?

25 A. Yes.

26 Q. In fact, one of the things that we know about

1 Brooms-Plaintiff-Direct

2 you sir is in conducting your business you have to give
3 business fairly, true?

4 A. Yes.

5 Q. It has to be done fully; am I right?

6 A. Yes.

7 Q. Would you agree with me that integrity is a
8 crucial part of your job in working as a superintendent
9 for the Department of Transportation?

10 A. Yes.

11 Q. We're talking about the ability to speak
12 honestly about what's going on, fair enough?

13 A. Yes.

14 Q. And when we say speak honestly, what we're
15 talking about is being completely honest with respect
16 to the work you are doing for the City of New York,
17 true?

18 A. Yes.

19 Q. So you know when filling out reports for the
20 business that you're in those reports have to be filled
21 out correctly, true?

22 A. Yes.

23 MS. DICOLA: Objection.

24 THE COURT: Overruled.

25 MS. DICOLA: Facts not in evidence.

26 THE COURT: Subject to.

1 Brooms-Plaintiff-Direct

2 Q. Those reports have to be filled out
3 correctly, true?

4 A. Yes.

5 Q. In fact, they have to be filled out honestly,
6 true?

7 A. Yes.

8 Q. In fact, you knew that you were duty bound
9 personally when you knew you were filling out reports
10 to make sure they were honest, true?

11 A. Yes.

12 Q. To make sure those reports reflect reality,
13 correct?

14 A. Yes.

15 Q. And you knew that it was completely
16 inappropriate on the other hand to fill out something
17 that was less than honest, fair enough?

18 A. Can you repeat the question.

19 Q. Sure. You recognized if you were to, for
20 example, deliberately misstate facts that would be
21 inappropriate, correct?

22 A. Yes.

23 Q. That would be wrong, correct?

24 A. Yes.

25 Q. That would be something that should never
26 ever be allowed, but you or anyone who works for you,

1 Brooms-Plaintiff-Direct

2 correct?

3 A. Yes.

4 Q. Because to do that would be completely the
5 opposite by what we mean by integrity, true?

6 A. Yes.

7 Q. In fact, not only would it be wrong, it would
8 be something that would be counter productive to
9 justice, fair enough?

10 MS. DICOLA: Objection.

11 THE COURT: Sustained.

12 Q. Would you agree with me sir that with respect
13 to the reports that you filled out and that you were
14 duty bound to figure out at all times you filled them
15 out honestly and truthfully, true?

16 A. Yes.

17 Q. Anything less would not be tolerated,
18 correct?

19 A. Correct.

20 Q. In fact, one of the people that worked for
21 you did something that was less than honest you would
22 correct them; wouldn't you?

23 A. Yes.

24 Q. You would tell them this is inappropriate,
25 true?

26 A. Yes.

1 Brooms-Plaintiff-Direct

2 Q. You would tell them don't put down facts that
3 are made up, right?

4 A. Yes.

5 Q. Because facts that are made up are not facts,
6 right?

7 A. Right.

8 Q. They are nonsense?

9 MS. DICOLA: Objection.

10 THE COURT: Sustained.

11 Q. Facts that are made up have no basis in fact,
12 true?

13 MS. DICOLA: Objection.

14 MR. RUBINOWITZ: Let me rephrase it if I
15 may.

16 THE COURT: Sustained.

17 Q. Would you agree with me that words trying to
18 express an idea that don't reflect reality should never
19 be put down in any report, correct?

20 MS. DICOLA: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: Can't answer that yes or
23 no.

24 (Continued on the next page)

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Direct-Brooms-Rubinowitz

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2 Q. In other words, are you telling us there are
3 times when it's appropriate to put down misstatements on
4 an official report?

5 MS. DICOLA: Objection.

6 THE COURT: Sustained.

7 Q. Is it ever appropriate, sir, for you to put
8 down misstatements in an official report submitted to the
9 Department of Transportation?

10 A. No.

11 Q. In fact, sir, that was something that didn't
12 even have to be taught to you, correct?

13 A. Correct.

14 Q. You knew that coming into the job, true?

15 A. Yes.

16 Q. You knew that with respect to whatever job
17 you had, whether it was in the Navy or JFK as a security
18 guard, you always must be honest in what you're doing,
19 true?

20 A. Yes.

21 Q. To do anything less would be inappropriate,
22 correct?

23 A. Correct.

24 Q. To do anything less would be unacceptable,
25 right?

26 MS. DICOLA: Objection.

1 Direct-Brooms-Rubinowitz

2 THE COURT: Sustained.

3 Q. Well, sir, with respect to the people that
4 worked for you, in the event they were to submit made up
5 information in an official report, you would help them to
6 correct it, wouldn't you?

7 MS. DICOLA: Objection.

8 THE COURT: Sustained.

9 Q. Wouldn't you tell them never submit anything
10 unless it's truthful?

11 A. Yes.

12 Q. Why would you do that? Why would you do
13 that?

14 A. Why would I do what?

15 Q. Why would you tell them never submit anything
16 unless it's truthful?

17 A. Because you have to be truthful.

18 Q. Why.

19 A. Because you have to be truthful.

20 Q. Why is it that you have to be truthful?

21 A. 'Cause you can't make up lies.

22 Q. So, if you were to base something off lies,
23 you would agree with me that that would be completely and
24 wholly inappropriate, true?

25 MS. DICOLA: Objection.

26 THE COURT: Sustained.

Direct-Brooms-Rubinowitz

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2 Q. You said you have to be truthful, right?

3 A. Correct.

4 Q. Would you agree with me that at all times
5 while you worked for the Department of Transportation you
6 had to be truthful?

7 A. Yes.

8 Q. Sir, in connection with this accident, you
9 had an opportunity to fill out reports, correct?

10 A. Yes.

11 Q. You had an opportunity to write down truthful
12 statements, correct?

13 A. Yes.

14 Q. You had an opportunity to put down in words
15 those words that reflected what actually took place,
16 correct?

17 A. Yes.

18 Q. And you knew that you were duty bound to do
19 that, true?

20 A. Correct.

21 Q. One of the things that we know with
22 certainty, with absolute certainty is that you never, ever
23 saw the pedestrian before the impact, correct?

24 A. Correct.

25 Q. And we know that you never saw her before the
26 accident, correct?

Direct-Brooms-Rubinowitz

1 A. Correct.

2 Q. And you did not know where Ms. Park was
3 coming from, am I right?
4

5 A. Correct.

6 Q. You had no idea where she was coming from,
7 correct?

8 A. Correct.

9 Q. So, it's a factual statement that is
10 100 percent true. You have no idea where she was before
11 the accident, right?

12 MS. DICOLA: Asked and answered.

13 MR. RUBINOWITZ: I'm asking about a factual
14 statement.

15 THE COURT: Overruled.

16 Q. It is a factual statement, sir, that you have
17 no idea where she was coming from before the accident,
18 true?

19 A. Correct.

20 Q. And it is a factual statement that you never
21 saw her before the accident, correct?

22 A. Correct.

23 Q. With that, sir, shortly after the accident
24 itself, you spoke to the police officer, didn't you?

25 A. Yes.

26 Q. And you admitted to that police officer that

1 Direct-Brooms-Rubinowitz

2 you never saw the pedestrian, correct?

3 A. Yes.

4 Q. You admitted to the police officer that you
5 had no idea where she came from, right?

6 A. Yes.

7 Q. You admitted to the police officer that you
8 had never seen her at the point of impact, correct?

9 A. Correct.

10 Q. Never saw her before the point of impact,
11 right?

12 A. Correct.

13 Q. And never seen her at any point in time,
14 correct?

15 A. Correct.

16 Q. You did know though that Ms. Park was
17 injured, didn't you?

18 A. Yes.

19 Q. And, in fact, you remained at the scene of
20 the accident for a certain amount of time, didn't you?

21 A. Yes.

22 Q. You called Control, correct?

23 A. Yes.

24 Q. You called 911?

25 A. Yes.

26 Q. When you called Control, do you recall who

Direct-Brooms-Rubinowitz

1
2 you spoke with?

3 A. No.

4 Q. Control is actually control for the
5 Department of Transportation, true?

6 A. Yes.

7 Q. Did you tell them at that point in time, I
8 never saw the pedestrian?

9 A. No.

10 Q. Did you tell them, I don't know where the
11 pedestrian came from?

12 A. No.

13 Q. How long did you speak with Control?

14 A. I don't remember.

15 Q. Do you recall anything you said to Control?

16 A. I told them I was in an accident and I called
17 the police.

18 Q. Nothing else?

19 A. They took my name.

20 Q. You knew at some point in time you would be
21 going back to the shop, right?

22 A. Correct.

23 Q. Your shop is in Maspeth, Queens, true?

24 A. Yes.

25 Q. And in Queens, that's where you worked out
26 of, that's the office that you, yourself worked out of,

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1
2 correct?

3 A. Yes.

4 Q. You had been driving -- you had been driving
5 the van that was involved in this accident for a while
6 before this accident, true?

7 A. Yes.

8 Q. In fact, you would actually take the van home
9 with you on a regular basis, correct?

10 A. Yes.

11 Q. How long have you been driving this
12 particular van before the accident?

13 A. I'm not sure exact time.

14 Q. Was it more than six months?

15 A. Yes.

16 Q. More than two years?

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

18 Q. Approximately what would you say?

19 A. A year, year and a half. When I was a
20 supervisor.

21 Q. Fair enough. About the same time you were a
22 supervisor, that's when you were given the van, right?

23 A. Right.

24 Q. So, if we say approximately a year and a
25 half, that would be true, wouldn't it?

26 A. Yes.

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2 Q. And you understand I'm not pinning you to the
3 exact amount of time. I'm saying a fair estimate. True?

4 A. Yes.

5 Q. When you got back to the shop in Maspeth,
6 Queens, you knew then you were going to have to complete
7 paperwork, right?

8 A. Yes.

9 Q. You knew the paperwork you had to complete
10 must be accurate, right?

11 A. Yes.

12 Q. Did anyone other than Mr. Allen, I don't want
13 to speak about him, in just a moment, did anyone speak to
14 you how to fill out that form beforehand?

15 A. The vehicle coordinator.

16 Q. Is that Mr. Schraft?

17 A. Correct.

18 Q. Did he tell you it's necessary for you to
19 fill out certain paperwork?

20 A. He gave me the package and told me to read
21 the directions.

22 Q. Anything else other than that?

23 A. Not that I recall.

24 Q. Okay. So, the only instruction you received
25 prior to filling out any paperwork was read the
26 instructions, true?

1 Direct-Brooms-Rubinowitz

2 A. Correct.

3 Q. Nothing was said to you about filling it out
4 honestly at that point in time, true?

5 A. We didn't -- No. That didn't come up.

6 Q. But you didn't need to be told that, did you?

7 A. No.

8 Q. In fact, what you knew, having worked at the
9 Department of Transportation, was you must fill it out
10 honestly, right?

11 A. Correct.

12 Q. You knew at that point in time when you got
13 back to the shop that you must fill it out fairly, right?

14 A. Correct.

15 Q. You must allow the document writing, that is
16 the words that you used, to reflect the reality, true?

17 A. Correct.

18 Q. Not to make up facts, correct?

19 A. Correct.

20 Q. Because to make up facts would be completely
21 wrong, wouldn't it?

22 MS. DICOLA: Objection.

23 THE COURT: Overruled.

24 Q. To make up facts would be completely wrong,
25 wouldn't it be?

26 A. Yes.

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Q. You knew that too, right?

A. Yes.

Q. There were certain reports that you filled out on the day of the accident, correct?

A. Yes.

Q. There are certain reports that you started on the day of the accident and then completed them a few days later, true?

A. Yes.

Q. There are certain reports for this accident that you filled out months later, correct?

A. Yes.

Q. And, in fact, sir, with the report that you filled out on the very day of the accident, can we agree at that point in time your memory was freshest concerning the accident itself?

A. Yes.

Q. And the reason we say that is, is because memories are better shortly after the event. Do you agree with that?

A. Yes.

Q. So that at the time you started to fill out the reports shortly after the accident, you knew what you had said to the police officer, right?

A. Yes.

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2 Q. You knew exactly the words that you had used
3 that you spoke with when you -- that you spoke about
4 rather when you spoke to the police officer, true?

5 A. Yes.

6 Q. When you spoke to the police officer you
7 meant to convey to him the truth, correct?

8 A. Yes.

9 Q. So, you had an opportunity to fill out
10 documents back at the shop. And I'm going to show you
11 what's been marked as Exhibit 10-A. We're marking it 10-
12 A at the deposition, but Plaintiff's Exhibit 8 here. I'm
13 going to show it to you anyway.

14 THE COURT: Can all the jurors see?

15 THE JUROR: I'll manage. I'm okay.

16 MS. DICOLA: Mr. Brooms, can you see?

17 THE WITNESS: Yes.

18 MR. RUBINOWITZ: If anybody can't see,
19 perhaps we could let the jurors sit in front.

20 THE COURT: Sure. If one of the jurors would
21 like to take that chair.

22 Q. Directing your attention to this document,
23 this is a document that you filled out on the very day of
24 the accident, correct?

25 A. Correct.

26 Q. Where I'm pointing right now, in fact I'm

1 Direct-Brooms-Rubinowitz

2 going to highlight it, that's your signature, true?

3 A. Yes.

4 Q. This is the day that you filled it out,
5 February 15, 2013, right?

6 A. Yes.

7 Q. It reads, "operator's name" here, Richard
8 Brooms, correct?

9 A. Yes.

10 MS. DICOLA: Is that the document that's in
11 evidence?

12 MR. RUBINOWITZ: It is.

13 MS. DICOLA: It shouldn't be highlighted. I
14 object. A document in evidence cannot be highlighted
15 by counsel.

16 THE COURT: Sustained. We'll remark it,
17 another copy, okay.

18 MR. RUBINOWITZ: I have another copy, if you
19 want. I'm trying to make it clear, judge.

20 THE COURT: We'll do it -- We'll remark it
21 later, okay.

22 Q. I want you to follow with me right now.

23 MR. RUBINOWITZ: If I could mark this one, I
24 don't mind putting the other one in. I'm trying to
25 do it with clarity, if I may.

26 MS. DICOLA: No objection to the clarity.

1 Direct-Brooms-Rubinowitz

2 THE COURT: I understand.

3 Q. So that you can follow me, sir. I just don't
4 want there to be any confusion. "Operator's statement",
5 see this. Just going to highlight where I'm pointing to
6 right now. "Operator's statement". Do you see that?

7 A. Yes.

8 Q. Okay. You were the operator, true?

9 A. Yes.

10 Q. All right.

11 MR. RUBINOWITZ: I have this one I'll show
12 the Court briefly. This is the same exact document
13 not highlighted. We'll substitute that at the end,
14 okay.

15 THE COURT: Okay.

16 Q. Reads in part, "I was making a left turn down
17 31st Street off of Sixth Avenue", correct?

18 A. Yes.

19 Q. And then it says, "Waited until crosswalk was
20 clear before proceeding", true?

21 A. Correct.

22 Q. It says, "A woman came" -- I'm going to
23 highlight this part -- "A woman came from between to
24 parked vans." You wrote those words, didn't you, sir?

25 A. Yes.

26 Q. You never saw a woman coming from between two

1 Direct-Brooms-Rubinowitz

2 parked vans, correct?

3 A. No, I didn't.

4 Q. But you wrote it, didn't you?

5 A. Yes.

6 Q. When you wrote that, you meant to convey
7 something other than the truth, true?

8 A. No.

9 Q. In fact, by stating a woman came from between
10 two parked vans, you really meant to say I never saw her,
11 is that it?

12 A. Can I explain this?

13 Q. If I may, sir. I'm sure you're attorney will
14 let you explain. I would like you to answer these
15 questions. This is the official document you filled out,
16 correct?

17 A. Yes, I did.

18 Q. No attorney was around you at the time you
19 filled it out, right?

20 A. No.

21 Q. You hadn't spoken with anyone concerning
22 explanation at that point in time, right?

23 A. No, I didn't.

24 Q. You knew a woman had been severely injured at
25 this point in time, right?

26 A. I didn't know her injuries.

Direct-Brooms-Rubinowitz

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2 Q. But you did know she was severely injured,
3 didn't you?

4 A. I didn't know her injuries. I know she left
5 in an ambulance.

6 Q. The fact that she left in an ambulance, you
7 knew she was hurt, right?

8 A. Correct.

9 Q. This is why you were filling out this very
10 document, true?

11 MS. DICOLA: Objection.

12 THE COURT: Overruled.

13 Q. This is why you were filling out this very
14 document, true?

15 A. I fill out an accident, an accident report.

16 Q. Did anyone ever tell you make up facts in an
17 accident report?

18 MS. DICOLA: Objection.

19 THE COURT: Overruled.

20 Q. Did anyone ever tell you to make up facts in
21 an accident report that you were filling out?

22 A. No.

23 Q. That's made up, isn't it?

24 A. No.

25 Q. You're saying that's not made up? Are you
26 saying that's not made up?

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A. Yes.

Q. So we can agree on this. You never saw any women coming from between two cars, true?

A. Correct.

Q. You have no idea where Ms. Park came from, right?

A. I don't know.

Q. But you stated affirmatively here a woman came from between two parked vans, right?

A. Correct.

Q. So that anyone reading that document would be left with one single impression, true?

A. Correct.

Q. And the impression that you wanted them to see was she was coming from between two parked vans exactly the way you wrote it, true?

A. That's what I could make out from.

Q. That's your report, sir, true?

A. Correct.

Q. At the point in time that you wrote this, were you trying to be completely honest?

A. I was trying to figure out.

Q. My question is slightly different.

A. Okay.

Q. At the time that you wrote this, were you

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A. Yes.

Q. So, we know that's something that you never observed, correct?

A. Correct.

Q. We know that's something you never saw at any point in time, correct?

A. Correct.

Q. But you represented to whoever was reading this that not only did she come between two parked vans, coming out into the street between two parked vans, but she also tripped, right?

A. Right.

Q. Were you creating a defense or trying to create a defense when you wrote that?

A. No, sir.

Q. Were you being completely honest when you wrote that?

A. Yes, sir.

Q. So, your definition of honesty is, I'll write words that I've never seen, true?

A. No, sir.

Q. You never saw this (indicating), true? You never saw her trip, right?

A. No, I didn't.

Q. But you wrote down that she came from between

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2 two parked vans and tripped, right?

3 A. Correct.

4 Q. What I'm trying to understand, sir, is when
5 you never see something and then write about something
6 that never existed, are you telling us that's the truth?

7 A. That's not what I'm saying.

8 Q. So, you know that when you write down that
9 she tripped, you know that wasn't the truth, correct?

10 A. I didn't see it, no, so I don't.

11 Q. When she came from between two parked vans,
12 that didn't happen from something you observed, correct?

13 A. Right.

14 Q. But anyone reading this would be left with
15 the singular impression a woman came from between two
16 parked vans and then she tripped into the street, right?

17 A. Correct.

18 Q. And then it was then that the back tire of
19 the van went over her, correct?

20 A. Correct.

21 Q. So we -- if we take it from the start and we
22 take it step by step, what you're saying is, I'm making a
23 left hand turn, right?

24 A. Correct.

25 Q. And this woman comes from between these two
26 vans that you didn't see, right?

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A. Correct.

Q. And knowing you didn't see her, all of a sudden she trips, correct?

A. Correct.

Q. And when she trips, she goes down to the street, right?

A. Correct.

Q. And then you run over her, right?

A. Correct.

Q. Are you representing to this jury that when you wrote, "A woman came from between two parked vans and tripped. The back tire of the van I was driving rolled over her", that that was completely the truth?

A. Yes.

Q. And you would represent to anyone at the Department of Transportation that those statements were completely truthful, right?

A. Yes.

Q. And the reason they are completely truthful is because you never saw any of it, right?

A. No.

Q. In fact, sir, anyone reading this in its entirety would be left with one singular impression, Ms. Park (gesturing) was completely at fault, right? Right?

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A. I can't answer that.

Q. Isn't that exactly what you were trying to do in writing it out this way?

A. No, sir.

Q. Isn't it exactly what you were trying to do to say, you know what, I never saw her ever, but I'm going to write down something on this document, an official document of the Department of Transportation, right?

A. No, sir.

Q. So when you wrote this down, you had an opportunity, didn't you, if you wanted to, to correct the statement, true?

A. I didn't say it was false.

Q. In other words, you're saying that statement is 100 percent truthful, correct?

A. I can't answer that yes or no, sir.

Q. Well, it's your statement, sir. You're the author of this, correct?

A. Right.

Q. It's either true or it's false. Isn't it true?

A. It's the truth to my knowledge.

Q. So, let's focus on your knowledge. Your knowledge would be based on something you observed, correct?

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A. Correct.

Q. You never observed her fall, correct?

A. I didn't.

Q. You never observed her trip, true?

A. I didn't.

Q. You never observed her coming between two vans?

A. I didn't.

Q. Knowing you never observed her at any point in time, you decided to write out this statement because in your mind that's 100 percent truthful, right?

A. Correct.

Q. Is this the way you were taught to fill out reports at the Department of Transportation?

A. I was taught to be honest.

Q. And honesty is everything, isn't it?

MS. DICOLA: Objection.

THE COURT: Overruled.

Q. Honesty is everything, isn't it?

A. Yes.

Q. And honesty is everything at the Department of Transportation, isn't it?

A. Yes.

Q. So when we say being honest, basically anyone could rely on this document and know exactly what took

1 Direct-Brooms-Rubinowitz

2 place when reviewing how the accident happened according
3 to Richard Brooms on the day of the accident, true?

4 MS. DICOLA: Objection.

5 THE COURT: Overruled.

6 Q. True, sir?

7 A. Yes.

8 Q. And Richard Brooms on the day of the accident
9 never once wrote down, I never saw her, true?

10 A. Correct.

11 Q. Richard Brooms on the day of the accident
12 never once wrote down, I have no idea where she came from?

13 A. Correct.

14 Q. There is a portion just under this and it
15 reads "Remarks". You had the opportunity, if you wanted
16 to for the clarity that we spoke about earlier, to write
17 down, but I want you to know I never saw her?

18 MS. DICOLA: Objection.

19 THE COURT: Overruled.

20 Q. You had the opportunity to write down if you
21 wanted to, for clarity, I never saw her, true?

22 A. Yes.

23 Q. You chose not to do that, correct?

24 A. I didn't write it, no.

25 Q. You made a deliberate decision to write down
26 these words that she came from between two parked vans.

Direct-Brooms-Rubinowitz

1 That was deliberate on your part, wasn't it?

2 A. No.

3 Q. That wasn't deliberate? You didn't intend to
4 write that down?

5 A. Oh, yes, sir. Yes. Yes.

6 Q. So, let me rephrase the question for clarity.
7 You made a deliberate decision to write down these words,
8 "A woman came from between two parked vans", right?
9

10 A. Yes.

11 Q. That was your choice, right?

12 A. Yes.

13 Q. That was your intention, right?

14 A. Yes.

15 Q. To write down something you never saw, right?

16 A. No.

17 Q. You wrote down something you never saw,
18 didn't you?

19 A. I did.

20 Q. And when you wrote that she tripped, that was
21 your intention also, to write those words down, correct?

22 A. Yes.

23 Q. And that's something you never saw, right?

24 A. Correct.

25 Q. Who at the Department of Transportation told
26 you write down things you never saw?

Direct-Brooms-Rubinowitz

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A. No one.

Q. Your choice again, correct?

A. Correct.

Q. And only your choice, true?

A. Yes.

Q. Would you agree with me, sir, it would be wholly inappropriate to concoct a story?

MS. DICOLA: Objection.

THE COURT: Overruled.

Q. Would you agree with me it would be wholly inappropriate to concoct a story?

A. Yes.

Q. Would you agree with me it would be wholly inappropriate to create something out of thin air that never happened?

A. Yes.

Q. Isn't that exactly what you did, sir?

A. No.

Q. You're saying you have factual support for the statements that you made, correct?

A. Yes, sir.

Q. So, the factual support is you never saw her, right?

A. Yes.

Q. You don't know where she was coming from,

Direct-Brooms-Rubinowitz

1
2 right?

3 A. Correct.

4 Q. And as far as you're concerned, the very best
5 you could do is write down these words, and nothing about
6 the fact that you never saw her with your own two eyes,
7 right (gesturing)?

8 A. Right.

9 Q. That's the way you look at being fair in
10 writing these reports, true?

11 A. No.

12 Q. Did you say no? Did you say no?

13 A. Yes.

14 Q. In other words, you think you were not being
15 fair when you wrote those words?

16 A. I'm sorry. I believe I was being fair, yes.

17 Q. Okay. So, you're being fair in writing down
18 words that didn't reflect something you saw, true?

19 A. Could you repeat the question or rephrase the
20 question? Sorry.

21 Q. Sure. You believe you were being fair in
22 writing down words describing something that you never
23 saw, true?

24 A. I don't understand the question.

25 Q. All right. Let me break it down, if I may.

26 We know for a fact you never saw her coming

Direct-Brooms-Rubinowitz

1 from between two parked vans that you wrote, correct?

2 A. Correct.

3 Q. You chose to write she was coming between two
4 parked vans, true?

5 A. Correct.

6 Q. We know that you wrote that she tripped,
7 correct?

8 A. Correct.

9 Q. We know that you never saw that either,
10 right?

11 A. Correct.

12 Q. And to your knowledge no one saw that,
13 correct?

14 A. Correct.

15 Q. So, you never got that information from any
16 other source, right?

17 A. No, I didn't.

18 Q. So, the one person who created these words
19 was you, true?

20 A. Yes.

21 Q. Is that fair?

22 MS. DICOLA: Objection.

23 THE COURT: Overruled.

24 Q. Is that fair? Take your time.

25 A. Is what fair?
26

Direct-Brooms-Rubinowitz

1
2 Q. Writing down words describing something that
3 you never saw on an official document. Is that fair?

4 A. I think I was being -- I think I was being
5 fair. I was writing down to the best of my ability.

6 Q. The best of your ability didn't include
7 putting down words such as, I never saw her or know where
8 she came from, true?

9 A. I made a mistake on that one.

10 Q. We know that the words were written
11 intentionally. We've already gone through that, true?

12 A. Yes.

13 Q. And the words that you used, the intentional
14 words that you chose to use had nothing to do with I never
15 saw her, know where she came from, correct?

16 A. Right.

17 Q. You said, I made a mistake on that one. Is
18 that what you just said?

19 A. Correct.

20 Q. When did you realize for the first time you
21 made a mistake on that one?

22 A. From reading it, I should have put that in.

23 Q. Turn the page over for just a moment. Take a
24 look at this. Accident location, full street name, you
25 wrote this. This is all in your handwriting, correct?

26 A. Yes.

1 Direct-Brooms-Rubinowitz

2 Q. "Sixth Avenue at 31st Street", true?

3 A. Correct.

4 Q. This document that we were just referring to,
5 which has the big Plaintiff's Exhibit 10-A right on it,
6 this was all in your handwriting, true?

7 A. Yes.

8 Q. The only thing that's not in your handwriting
9 on this is the name Dave Allen, correct?

10 A. Correct.

11 Q. Dave Allen was your supervisor, true?

12 A. Superintendent.

13 Q. He was actually --

14 A. Yes.

15 Q. -- ahead of you, if I may?

16 A. Yes.

17 Q. I don't want to refer to him as your boss
18 unless he was.

19 A. Yes.

20 Q. Would that be a fair statement?

21 A. That's fine. Yes.

22 Q. So, David Allen was somebody else who worked
23 at the Department of Transportation, correct?

24 A. Yes.

25 Q. At the Maspeth shop, true?

26 A. Yes.

Direct-Brooms-Rubinowitz

1
2 Q. And his name also exists on this document,
3 correct?

4 A. Correct.

5 Q. So, it's also dated the very same day,
6 February 15th, right?

7 A. Correct.

8 Q. So we know that on February 15th David Allen
9 saw what you wrote, correct?

10 A. Correct.

11 Q. Did you discuss this with David Allen on this
12 day?

13 A. About the accident?

14 Q. Yes.

15 A. Yes, I did.

16 Q. And when you discussed it with David Allen
17 about the accident on this day, did you tell him, when I
18 wrote down that a woman came from between two parked vans,
19 you know what, Dave, I didn't see it. Did you tell him
20 that?

21 A. Can't recall if I did or not.

22 Q. Do you think it would be important to tell
23 David Allen whether or not you saw what you wrote?

24 A. Yes.

25 Q. But you chose not to do that, correct?

26 MS. DICOLA: Objection.

1 Direct-Brooms-Rubinowitz

2 THE COURT: Overruled.

3 Q. You chose not to do that, correct?

4 A. I can't recall if I told him that.

5 Q. Did you tell David Allen, your boss, not only
6 did she come from between two parked vans, she then
7 tripped? Did you tell him that?

8 A. Yeah.

9 Q. Did you tell him, you know what, I never saw
10 that, but I certainly intended to write it down? Did you
11 tell him that?

12 A. I can't recall if I spoke about that.

13 Q. When you told Mr. David Allen, did he say to
14 you, let's just take these two facts, a woman came from
15 between two parked vans and then she tripped. She must be
16 completely at fault. Did he say that to you?

17 A. No, he didn't.

18 MS. DICOLA: Objection.

19 THE COURT: Overruled.

20 MS. DICOLA: What he said to him.

21 Q. He's part of the Department of
22 Transportation, isn't he?

23 MS. DICOLA: Calls for hearsay.

24 THE COURT: Overruled.

25 A. Yes, he is.

26 Q. And, in fact, did he say she must be

1 Direct-Brooms-Rubinowitz

2 completely at fault?

3 MS. DICOLA: Same objection.

4 THE COURT: Overruled.

5 MS. DICOLA: Standing objection.

6 A. No, he didn't.

7 Q. Did you discuss who was at fault?

8 A. No, I didn't.

9 Q. That didn't come up at all, right?

10 A. No, sir.

11 Q. Not a word about who was at fault for the
12 happening of this accident, right?

13 A. No, sir.

14 Q. Did he say anything about the fact that what
15 you've written creates a complete and total defense to the
16 case?

17 A. Did he say that. No, he didn't.

18 Q. Are you telling this jury right now that what
19 you wrote was written not to create a defense?

20 MS. DICOLA: Objection.

21 A. Correct.

22 THE COURT: Overruled.

23 A. Yes, I am.

24 Q. And you're telling them that was meant to
25 reflect reality?

26 A. As best I could put together, yes.

Direct-Brooms-Rubinowitz

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2 Q. When you say put it together, did anyone from
3 the Department of Transportation ever say to you, put it
4 together by creating facts out of thin air? Did anyone
5 ever say that?

6 A. No.

7 Q. Isn't that exactly what you did?

8 A. No, sir.

9 Q. You have no factual basis from seeing it
10 firsthand, correct?

11 A. No, I don't.

12 Q. You have no factual basis from anyone telling
13 you about that, true?

14 A. No, I don't.

15 Q. You have no factual basis from any video
16 recorder, correct?

17 A. No.

18 Q. From any camera, true?

19 A. Correct.

20 Q. At any point in time when you spoke with
21 David Allen, your boss, on the day of the accident did you
22 say to him, there is something I have to tell you. I
23 never saw her or know where she came from?

24 A. I don't recall that part of the conversation.

25 Q. Do you think that happened?

26 A. I can't -- can't say yes or no.

Direct-Brooms-Rubinowitz

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Q. How long did you speak with David Allen?

A. Initially or back at the shop?

Q. Let's talk about this day.

A. I can't remember.

Q. Was it more than ten minutes?

A. I spoke to him right after the accident, and then I spoke to him back at the shop.

Q. So, right after the accident you called him from the scene?

A. Correct.

Q. Did you say to him, I want you to know I never saw her. Never saw the pedestrian. Did you say that?

A. I told him I was involved in an accident.

Q. Try my question.

A. Okay. Sorry.

Q. If I may. Did you say to him, I never saw the pedestrian?

A. I can't remember if I did or not.

Q. Would you agree with me you would want to impart information to him so he would know what happened? He's your boss.

A. Correct.

Q. Knowing that, you want to impart information to him because he's your boss, wouldn't you want to tell

Direct-Brooms-Rubinowitz

1
2 him, I never saw the pedestrian, know where she came from?
3 Wouldn't you want to tell him that, sir?

4 A. Correct. Yes.

5 Q. And, in fact, sir, using your best judgment,
6 isn't the truth you did tell him that?

7 A. Say it again.

8 Q. In fairness, using your best judgment, isn't
9 the truth that you did tell him that?

10 A. I can't recall if I told him or not.

11 Q. How long did the conversation last with him
12 while you were at the scene?

13 A. It was brief.

14 (Continue on the next page.)
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1 Brooms-Plaintiff-Direct

2 Q. 10 minutes?

3 A. Not that long.

4 Q. 5 minutes?

5 A. Brief. I told him that --

6 Q. 5 minutes?

7 A. No, sir.

8 Q. Tell us what you told him?

9 A. I told him I was involved in an accident and
10 I called control and I called 911.

11 Q. Did he ask you then what happened?

12 A. He didn't.

13 Q. He referred to you as Richie; didn't he?

14 A. I can't remember if he did or not.

15 Q. You don't remember if I called you Richie?

16 A. I was in an accident. I can't remember that
17 type of detail.

18 Q. Before the accident you and he were friends,
19 right?

20 A. He referred to me as Richie, yes.

21 Q. He was referring to you as Richie for quite
22 awhile?

23 A. Yes.

24 Q. Because you had been working with him for
25 quite awhile, true?

26 A. Yes.

1 Brooms-Plaintiff-Direct

2 Q. Tell us how long you had been working with
3 him?

4 A. I'm not sure.

5 Q. How many years?

6 A. Dave, he's been there for awhile, but people
7 get shifted around. I seen him around the shop working
8 directly maybe the same year and a half when I was
9 supervisor.

10 Q. You refer to him as Dave, correct?

11 A. Correct.

12 Q. He cause you Richie, right?

13 A. Yes.

14 Q. You're friendly?

15 A. Correct.

16 Q. At the point in time when you spoke with him
17 do you believe it was your best recollection that you
18 told him I never saw her?

19 A. I don't remember if I told him one way or the
20 other.

21 Q. Were you trying to prevent anyone from the
22 Department of Transportation knowing that in fact you
23 never saw the pedestrian nor where she came from?

24 A. No, Sir.

25 Q. You weren't hiding that at all, were you?

26 A. No, Sir.

1 Brooms-Plaintiff-Direct

2 Q. Because you wouldn't want to hide a fact like
3 that, would you?

4 A. Correct.

5 Q. Because hiding a fact like that would be
6 completely contrary to the fairness and honesty you
7 spoke about at the beginning of this examination, true?

8 A. Correct.

9 Q. Something you would never ever do, correct?

10 A. Yes.

11 Q. Because if you would do that, that would be
12 completely inappropriate, true?

13 A. Correct.

14 Q. Something you would never do, correct?

15 A. Correct.

16 Q. Given the opportunity of course you would
17 share with others exactly what took place that you had
18 never seen her, right?

19 A. Correct.

20 Q. And that you never knew where she came from,
21 right?

22 A. Right.

23 Q. Well, this isn't the only report that you
24 filled out; is it sir?

25 A. No, it isn't.

26 Q. In fact, you filled out a report that was

1 Brooms-Plaintiff-Direct

2 going to be sent to the Motor Vehicle Department,
3 correct?

4 A. Correct.

5 Q. This is a what's known as a form -- I will
6 zoom in over here just to show you. Form MV-104,
7 Department of Motor Vehicle form report of motor
8 vehicle accidents. See where I'm pointing?

9 A. Yes.

10 Q. You filled out this form, correct?

11 A. Yes.

12 Q. And this form was one that you started to
13 fill out on the very day of the accident and then
14 continued on February 18th, 2013, correct?

15 A. Correct.

16 Q. And in fact it's signed by you at the very
17 bottom. I'm not going to highlight this one. I'm just
18 going to point if I may. I want you to see exactly
19 where I'm pointing at right here, correct?

20 A. Correct.

21 Q. That's your signature, your name, and you
22 dated it February 18th, 2013, correct?

23 A. Correct.

24 Q. In this it actually has a portion which reads
25 and I recognize it's a little blurry, but make it out
26 pretty clearly here, how did the accident happen. So

1 Brooms-Plaintiff-Direct

2 on this report under how did the accident happen you
3 wrote no description at all, right?

4 A. No.

5 Q. You didn't write anything there?

6 A. I didn't write anything.

7 Q. But you knew at this point in time that as
8 you say you had made a mistake in not letting others
9 know that you never saw the pedestrian in the documents
10 you were filling out, correct?

11 A. Repeat that question.

12 Q. Sure. Did you tell us earlier that you made
13 a mistake not putting down in the document that I told
14 you before this one exhibit what's marked 10A right
15 here?

16 A. Yes.

17 Q. You didn't put anything about that I never
18 saw her or know where she came from, correct?

19 A. Correct.

20 Q. And you didn't put down anything in that one
21 I never saw her trip, right?

22 A. On which one.

23 Q. On any form you never wrote down I never saw
24 her trip on this one, correct?

25 A. Correct.

26 Q. Or that you never saw her coming from between

1 Brooms-Plaintiff-Direct

2 two cars, right?

3 A. Right.

4 Q. Now, would you agree with me that when you
5 were filling out this form for the Department of Motor
6 Vehicles you understood that you were submitting an
7 official document once again, correct?

8 A. Right.

9 Q. And when you submit an official document,
10 it's supposed to be done honestly, true?

11 A. Correct.

12 Q. Fairly, correct?

13 A. Correct.

14 Q. One that reflect reality, true?

15 A. Correct.

16 Q. One that does not contain misinformation,
17 correct?

18 A. Correct.

19 Q. One that does not contain words that are made
20 up out of thin air, correct?

21 A. Correct.

22 Q. Because that would be improper, correct?

23 A. Correct.

24 Q. But did you write certain information on this
25 one because on the very right hand side there is a key.
26 You see this key where it has different boxes and

1 Brooms-Plaintiff-Direct

2 numbers here?

3 A. Yes.

4 Q. And if we turn the page over because it's a
5 two part page the key Section B actually has -- I will
6 just zoom in on this so everyone can see it. It has
7 certain words. So you actually took a look at the key
8 and you decided what you were going to write. And you
9 could write here, for example, pedestrian and what you
10 wrote was pedestrian. It says bicyclist, pedestrian
11 not at intersection. Number two, see that?

12 A. Okay.

13 Q. And that's what you actually filled in on the
14 front page for box number 4, you wrote 2. See this
15 right here. But the truth is sir you never saw the
16 pedestrian at all, correct?

17 A. I didn't.

18 Q. And then there is a number 7 for the second
19 box down. See number 7.

20 A. Yes.

21 Q. And if you go to number 7 it says from
22 emerging from in front of behind parked vehicle, that's
23 something you never saw, correct?

24 A. Correct.

25 Q. So on this document we go to the whole
26 document. I'll just show you, you had an opportunity

1 Brooms-Plaintiff-Direct

2 to describe how the accident happened by writing down
3 fairly, I never saw the pedestrian, right?

4 A. Correct.

5 Q. You had an opportunity to write down I have
6 no idea where she came from, correct?

7 A. Correct.

8 Q. But you choose not to do that again, correct?

9 A. Correct.

10 Q. And by not writing that down again you
11 believe that you were being absolutely fair, true?

12 A. Yes.

13 Q. Because that's the way fairness is done in
14 the Department of Transportation according to you,
15 true?

16 A. Repeat the question.

17 Q. Sure. By not writing down the facts that you
18 knew with certainty that you never saw her, you had no
19 idea where she came, that's the way you believe this
20 report should be filled out, right?

21 A. No, Sir.

22 Q. Excuse me.

23 A. No.

24 Q. In other words, you should have written that
25 down, right?

26 A. Yes. I should have had that down, yes.

1 Brooms-Plaintiff-Direct

2 Q. Unless you didn't want people to know that,
3 correct?

4 A. No, Sir.

5 Q. Well, one of the things that you never put
6 down was exactly what I just said, that she was someone
7 that you never saw, right?

8 A. Correct.

9 Q. Given your sense of fairness why didn't you
10 write that down on this document the MV 104 submitted
11 to the Department of Motor Vehicles?

12 A. The first one I wrote down I was filling it
13 out and then I left early for the day.

14 Q. My question is why didn't you write down on
15 this document one that we have up right now marked
16 Plaintiff's Exhibit 9A, why didn't you write down on
17 that document I never saw her. That is, the pedestrian
18 Ms. Park, nor where she came from. I'm asking why
19 didn't you do that?

20 A. I don't know.

21 Q. Isn't it true sir the reason is because you
22 were creating a defense to the case?

23 A. No, Sir, that's not true.

24 Q. When you wrote number 7 that she's coming
25 from between parked vehicles once again you're
26 representing something you never saw on this document,

1 Brooms-Plaintiff-Direct

2 true?

3 A. Correct.

4 Q. On this document as well, correct?

5 A. Correct.

6 Q. And you believe as you sit here right now
7 that fairness and honesty is something that you were
8 comporting with the whole time you filled out this
9 document, right?

10 A. Yes.

11 Q. Did anyone prevent you from explaining the
12 fact that you never saw Ms. Park?

13 A. What are you talking about, when?

14 Q. When you filled out the document sir, the MV
15 104.

16 A. No.

17 Q. You started to fill out this document on the
18 very day of the accident, correct?

19 A. Correct.

20 Q. And you already told us at your deposition if
21 I may that you continued it on the 18th, right?

22 A. Right.

23 Q. What part did you fill out on the date of the
24 accident?

25 A. I don't remember.

26 Q. What part did you finish on the 18th?

1 Brooms-Plaintiff-Direct

2 A. I don't remember.

3 Q. Did you speak with your supervisor Dave Allen
4 in between the day of this accident the 15th and the
5 18th?

6 A. I can't remember if I did one way or the
7 other.

8 Q. Did you speak to him about the accident?

9 A. No.

10 Q. Who asked you to fill this out.

11 A. The vehicle coordinator Fred Schraft gave it
12 to Dave and he told me to fill it out. Dave told me to
13 fill it out.

14 Q. Fred Schraft is the vehicle coordinator for
15 the Department of Transportation, correct?

16 A. At the time yes.

17 Q. And you understood it was his responsibility
18 to make sure that you filled out the accident report to
19 be submitted to the Department of Motor Vehicles,
20 correct?

21 A. Correct.

22 Q. And you understood without them even telling
23 you that this was an official document that was being
24 submitted to the Department of Motor Vehicles, true?

25 A. Correct.

26 Q. And you knew that it had to be completed

1 Brooms-Plaintiff-Direct

2 honestly without anyone telling you that, right?

3 A. Yes.

4 Q. Did you say to Fred Schraft I want you to
5 know something. I never saw Ms. Park nor where she
6 came from?

7 A. No.

8 Q. When you submitted this document, this motor
9 vehicle accident record dated February 18th, 2013, did
10 you believe that you had fully completed this report?

11 A. It wasn't fully completed, no.

12 Q. When you submitted it, did you believe you
13 were submitting a fully completed report?

14 A. No.

15 Q. So there was a reason that you didn't
16 complete it, is that what you're saying?

17 A. Correct.

18 Q. Eventually you knew you would have to fill
19 out another one, correct?

20 A. Yes.

21 Q. Because more than three months passed and
22 then you fill out another motor vehicle accident report
23 to be submitted to the Department of Motor Vehicles,
24 correct?

25 A. Correct.

26 Q. Before you submitted this first one, did you

1 Brooms-Plaintiff-Direct

2 show it to Dave Allen and say hey Dave, there is
3 something you ought to know about this, I never saw
4 her?

5 A. No.

6 Q. Did you say to anyone, anyone at all in the
7 Department of Transportation I never saw her?

8 A. I can't recall one way or the other if I did.

9 Q. Were you hiding that fact from anyone in the
10 Department of Transportation?

11 MS. DICOLA: Objection.

12 THE COURT: Overruled.

13 Q. Were you hiding that fact?

14 A. No, Sir.

15 Q. You just didn't put it down on any official
16 form, correct?

17 A. Correct.

18 Q. So anyone looking at the first document we
19 have this Exhibit 10A wouldn't know anywhere, anywhere
20 is there anything written that says you never saw it?

21 A. On the documents, no.

22 Q. Is there any writing in the first three days
23 following this accident that you made that says to
24 anyone at the Department of Transportation I never saw
25 her? I don't know where she came from?

26 A. No.

1 Brooms-Plaintiff-Direct

2 Q. The one person who possessed that information
3 though with certainty was you, true?

4 A. Correct.

5 Q. And you weren't putting that down in writing,
6 correct?

7 A. I didn't, no.

8 Q. There was another motor vehicle accident
9 report that you were able to fill out by the vehicle
10 coordinator, correct?

11 A. Correct.

12 Q. Mr. Fred Schraft?

13 A. Correct.

14 Q. Did Mr. Schraft tell you why it was he wanted
15 you to fill out another report very similar to the one
16 that's marked 9A in evidence?

17 A. Misinformation I believe.

18 Q. Misinformation or missing information?

19 A. Missing.

20 Q. Missing information?

21 A. Correct.

22 Q. In other words, now you had an opportunity to
23 write down what actually occurred, correct?

24 A. I don't think that was his reference, no.

25 Q. In other words, you knew that you had made a
26 mistake in not putting down all of the information,

1 Brooms-Plaintiff-Direct

2 right?

3 MS. DICOLA: Objection.

4 THE COURT: Sustained.

5 Q. Didn't you know that you told us already that
6 you knew that you didn't put down anything in these
7 records that you never saw her or where she came from?

8 A. I can't answer that question yes or no.

9 Q. Sir, at any point in time before you filled
10 out the second MV 104 in May of 2013, did you write any
11 document to the Department of Transportation that said
12 I never saw Ms. Park nor where she came from?

13 A. No, I didn't.

14 Q. Did you write down any document anywhere
15 whether it was the Department of Transportation or
16 anyone else that said I never saw her nor where she
17 came from?

18 A. No, I didn't.

19 Q. But you believe in your mind that you were
20 being completely fair and honest, true?

21 A. Right.

22 Q. Directing your attention to Exhibit 9C and
23 I'll go first to the date. Down at the bottom the date
24 May 17th, 2013, your name Richard Brooms. Your
25 signature, right?

26 A. Correct.

1 Brooms-Plaintiff-Direct

2 Q. You knew that this had to be filled out
3 honestly, correct?

4 A. Yes.

5 Q. You knew that this document had to be filled
6 out fairly, true?

7 A. Yes.

8 Q. And you knew that it was your obligation when
9 you're filling out a document such as this that's going
10 to be submitted to the Department of Motor Vehicles
11 that it should include information so that the reviewer
12 would understand from your prospective what took place,
13 correct?

14 A. Right.

15 Q. In other words, so that you could provide
16 honest information once again, true?

17 A. Right.

18 Q. And if we go back to the key for just a
19 moment up at the top, there is a 2. And there is a 7.
20 And it's exactly the same key as the last one, correct,
21 so that we know if we take a look at the 2 and the 7
22 what those mean, true?

23 A. Correct.

24 Q. So we now have the 2 on this one which is
25 filled out in May. The it 2 reflecting that the
26 pedestrian was crossing not at an intersection, right?

1 Brooms-Plaintiff-Direct

2 A. Correct.

3 Q. But you didn't know where she was, right?

4 A. Right.

5 Q. You're writing she was not at an intersection
6 accepting it in an official document that's being
7 submitted to the Department of Motor Vehicles, correct?

8 A. Yes.

9 Q. And then the 7 represents once again that she
10 is emerging from a front of or behind parked vehicle,
11 correct?

12 A. Yes.

13 Q. Once again something that you never ever saw,
14 true?

15 A. Right.

16 Q. And you believed that by writing that on this
17 official document that what you were doing was being
18 completely honest, right?

19 A. Right.

20 Q. And what you believe you were doing was being
21 completely fair, true?

22 A. Yes.

23 Q. And that's the way you do it at the
24 Department of Transportation, right?

25 MS. DICOLA: Objection.

26 THE COURT: Sustained.

1 Brooms-Plaintiff-Direct

2 Q. Would you tell your subordinates, those who
3 work for you that's what you should do?

4 MS. DICOLA: Objection.

5 THE COURT: Overruled.

6 Q. Let me back up for a moment.

7 THE COURT: You'll return the question.

8 Proceed.

9 Q. If I may. Sir, if I may you have people that
10 work for you, correct?

11 A. Correct.

12 Q. Would you ever tell those people put down
13 misinformation in a report?

14 A. I'll tell them to be honest.

15 Q. My question is slightly different. Would you
16 tell them to put down misinformation in a report?

17 A. No, I wouldn't.

18 Q. And there is a reason you wouldn't do that,
19 right?

20 A. Right.

21 Q. Tell the court and jury what that reason is?

22 A. It wouldn't be truthful.

23 Q. And that wouldn't be appropriate if you
24 wouldn't be truthful, correct?

25 A. Correct.

26 Q. That's why anything that you write would be

1 Brooms-Plaintiff-Direct

2 truthful, right?

3 A. Say it again.

4 Q. That's why anything that you write would have
5 to be truthful, correct?

6 A. Correct.

7 Q. Even if you don't see something, in your mind
8 that's the truth, correct?

9 A. Yes.

10 MR. RUBINOWITZ: Judge, could we take a
11 short break at this point.

12 THE COURT: Sure. Jury, we'll take
13 let's say 10 minutes. You want to get coffee,
14 it's on the first floor. I'll just let you all
15 know feel free at any point in time to bring
16 coffee with you or any other beverages and I want
17 you to feel as comfortable as possible. Okay.
18 Jury is dismissed for 10 minutes.

19 COURT OFFICER: All rise. Jury exiting.

20 MS. DICOLA: Can you instruct Mr. Brooms
21 that he could take a break and we could not talk
22 about the case.

23 THE COURT: Obviously during any breaks
24 in the action you could talk to your lawyers about
25 anything other than your testimony. Okay.

26 THE WITNESS: Okay.

1 Brooms-Plaintiff-Direct

2 THE COURT: But you could take a break
3 and go to the rest room too.

4 (Whereupon, a brief recess is taken)

5 COURT OFFICER: All rise. Jury
6 entering.

7 THE COURT: Everyone please be seated.
8 Counsel, you may continue with your examination.

9 MR. RUBINOWITZ: Thank you, Judge.

10 Q. Sir, directing your attention back to Exhibit
11 9C which is the motor vehicle accident report that you
12 filed with the Department of Motor Vehicles on May
13 17th, of 2013. Once again there is a portion in this
14 that reads and I'm just going to zoom in right here how
15 did the accident happen. This is the third report that
16 you filled out concerning this accident, correct?

17 A. The report or document?

18 Q. Third document?

19 A. Correct, yes.

20 Q. In each of those documents you had an
21 opportunity to explain fully and completely what took
22 place, true?

23 A. Correct.

24 Q. No one prevented you from writing anything
25 down to allow the reader of the document to know
26 exactly what took place, right?

1 Brooms-Plaintiff-Direct

2 A. Yes.

3 Q. And your sense of fairness and honesty
4 allowed to you write down what you thought was
5 appropriate, correct?

6 A. Yes.

7 Q. And your sense of honesty and fairness is
8 that you were not going to say one word that you never
9 saw the pedestrian, right?

10 MS. DICOLA: Objection.

11 THE COURT: Overruled.

12 Q. Your sense of honesty and fairness is that
13 you were not going to say that you never saw the
14 pedestrian, true?

15 A. No.

16 Q. True?

17 A. No.

18 Q. You were going to say it?

19 A. No.

20 Q. You were not going to say it, true?

21 A. I don't know why they put it down.

22 Q. Isn't the reason you didn't put it down is
23 because you were trying to create the perfect defense?

24 A. No, Sir.

25 Q. Sir, isn't the reason that you didn't put
26 that down because if it's put down that you never saw

1 Brooms-Plaintiff-Direct

2 her it wouldn't make any sense at all to say that she
3 was coming from between two parked vehicles, correct?

4 A. Yes, Sir.

5 Q. Isn't it true that those two statements can't
6 be put together logically?

7 MS. DICOLA: Objection.

8 THE COURT: Overruled.

9 MS. DICOLA: May we approach.

10 MR. RUBINOWITZ: Judge.

11 THE COURT: Yes. The jury please step
12 out.

13 COURT OFFICER: All rise, jury exiting.

14 THE COURT: Please step outside and wait
15 in the hallway.

16 (Whereupon, the jurors and the witness
17 exit the courtroom)

18 MS. DICOLA: Your Honor, may I have the
19 question read back. I just want to make sure that
20 I heard it accurately.

21 THE COURT: Please read back the
22 question.

23 (Read back)

24 MS. DICOLA: Your Honor, this goes to
25 the issue of whether or not two statements can be
26 logically as counsel indicated combined is a

1 Brooms-Plaintiff-Direct

2 question of fact for the jury. The jury will in
3 fact be instructed as to whether or not as part of
4 the charge they can reconcile different versions
5 of events. It goes back in a way to what your
6 Honor alluded to earlier. That in addition to
7 determining whether or not one if a person lies
8 about one thing falsus in uno charge, if a person
9 lies about one thing did they lie about
10 everything. It also goes to the charge itself
11 reads, if they can't logically construct something
12 together they are instructed by the court to do
13 so. If they can't, then they can do that as well.
14 But obviously to ask the ultimate issue of my
15 witness as to whether or not he can logically --

16 THE COURT: He could say yes or no,
17 right? At which point in time I assume you're
18 going to be asking questions on why it is he
19 thinks that it will be put together logically. So
20 the question can be posed. Okay, I mean he may
21 give an admission that he can't be, but he's been
22 sticking pretty tightly to the conclusion and sort
23 of things. He's asking can you put these two
24 things together logically. At least in his mind
25 he understands the question. He can answer the
26 question. My assumption is going to be that he's

1 Brooms-Plaintiff-Direct

2 going to say yes he can. You folks can then say
3 listen why do you think the two stories can be put
4 together.

5 MS. DICOLA: I just think, your Honor,
6 to ask a witness on the stand an ultimate issue
7 that will go before the jury.

8 THE COURT: It's not an ultimate issue.
9 You see the ultimate issue was he negligent, was
10 he not, those are the ultimate issues. If he
11 could say, you know, issues such as do you think
12 you are at fault, all these sort of things this is
13 obviously legal connotations, but there are also
14 factual connotations. So if he says yes, he can
15 then if he wants to ask an open end question, tell
16 me how to do it. Okay. And give it then person
17 can give an explanation and the jury can either
18 accept that explanation or not in trying to fit
19 the stories together. I don't know if he's going
20 to ask an open end question or not. And I don't
21 know if you're going to come back to it and ask
22 it. So he could answer the question and then he
23 could always be asked to explain why. Okay. And
24 it will either be done by plaintiff's counsel or
25 defense counsel. One or the other I assume will
26 give him the reason why. He'll give his

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Brooms-Plaintiff-Direct

explanation. Okay, so and that will just have to come from there. Okay. Okay. So we could bring the jury in. First let's bring the witness in and then we'll bring the jury in.

(Continued on the next page)

1 Direct-Brooms-Rubinowitz

2 COURT OFFICER: All rise. Jury entering.

3 (Whereupon the jury panel entered the
4 courtroom.)

5 THE COURT: You can be seated. You don't
6 have to wait for me. For the jurors, once you get to
7 your seats, just sit down. It's just easier. Once
8 all the jurors are seated, everyone else can sit
9 down, okay. Sometimes I'm paying attention to
10 something else and everyone is just waiting, okay.
11 Proceed.

12 MR. RUBINOWITZ: Thank you. With the Court's
13 permission, I just ask the court reporter to read
14 back the last few questions.

15 (Whereupon the above-requested testimony was
16 read back.)

17 A. Yes.

18 Q. It is true, correct?

19 A. Yes.

20 Q. All right. So, you now know that you can't
21 on the one hand have something you never saw and then put
22 a statement like you wrote in your reports together and
23 have them make any sense, right?

24 A. Yes.

25 Q. And knowing that they don't make any sense
26 whatsoever, never once in the three documents, including

1 Direct-Brooms-Rubinowitz

2 two motor vehicle reports, did you ever write down, I
3 never saw her, correct?

4 A. Correct.

5 Q. But the truth is, you never saw her, right?

6 A. Correct.

7 Q. On the report, the motor vehicle accident
8 report submitted to Albany, you indicated she came from
9 between two parked vehicles, right?

10 A. Correct.

11 Q. And we know they both can't exist at the same
12 time, right? We just discussed that, true?

13 A. Right.

14 Q. So we know that one statement is false, true?

15 MS. DICOLA: Objection.

16 THE COURT: Overruled.

17 Q. One statement is false, correct?

18 A. Correct.

19 Q. Yes?

20 A. Correct.

21 Q. The one statement that was false is the one
22 statement that you wrote, correct?

23 A. Correct.

24 Q. The one statement that you wrote on three
25 different documents is false, true?

26 A. Correct.

Direct-Brooms-Rubinowitz

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2 Q. And knowing that it was false, you never took
3 the time to correct it, true?

4 A. Repeat the question, please, sir.

5 Q. Sure. You know it's a false statement to say
6 she came from between two parked vehicles, right?

7 THE COURT: Asked and answered. He's -- he's
8 answered the question.

9 MR. RUBINOWITZ: I'm sorry. I thought he
10 asked me to repeat it.

11 THE COURT: Did you ask him to repeat the
12 question? He asked you to repeat the question not
13 the summary up to it.

14 MR. RUBINOWITZ: Forgive me. I
15 misunderstood. I'm trying to straighten this out in
16 my mind.

17 Q. You recognize it's false to have put down in
18 the reports that you saw something that you never saw,
19 correct?

20 A. Yes. Yes.

21 Q. And you recognize that it's false to put down
22 in a report something that has no basis in reality, true?

23 MS. DICOLA: Objection.

24 THE COURT: Sustained.

25 Q. You recognize that it's false to put down
26 that you saw her coming from between two parked vehicles?

1 Direct-Brooms-Rubinowitz

2 MS. DICOLA: Objection.

3 THE COURT: Overruled.

4 Q. You recognize that it's false to write down
5 that you saw her coming from between two parked vehicles?

6 MS. DICOLA: Objection to form.

7 THE COURT: Overruled. Overruled.

8 A. I didn't write it down, sir.

9 Q. "A woman came from between two parked vans",
10 you wrote that, correct?

11 A. Correct.

12 Q. When you just told us you didn't write that
13 down, that's exactly what you wrote, isn't it?

14 MS. DICOLA: Objection.

15 THE COURT: Sustained. He said I didn't
16 write down I saw the woman coming from two parked
17 vans.

18 Q. So, when you wrote this, "A woman came from
19 between two parked vans", are you stating here that
20 because you didn't say you saw her, this statement is then
21 correct?

22 A. You asked me a question. I answered the
23 question you asked.

24 Q. I'm asking you right now, sir, weren't you
25 representing to anyone reading this document, anyone, that
26 Ms. Park came from between two parked vans?

Direct-Brooms-Rubinowitz

1 MS. DICOLA: Asked and answered.

2 THE COURT: Overruled.

3 Q. Isn't that true, sir?

4 A. Correct.

5 Q. In fact, you never saw that, we know that for
6 a fact, right?

7 A. Right.

8 Q. Sir, in any of these three documents that you
9 filled out, at the time that you filled out the documents,
10 why didn't you write down, I never saw her?

11 A. I don't know, sir.

12 Q. Why didn't you write down, I have no idea
13 where she came from?

14 A. I don't know.

15 Q. That's something you knew with absolute
16 certainty, right?

17 A. Correct.

18 Q. And knowing that that's the one thing that
19 you knew with absolute certainty, that you didn't see her
20 and you didn't know where she came from, that's something
21 you deliberately chose not to include in any report or
22 document, right?

23 A. I didn't put it down, no.

24 Q. Going back to the report that you filled out
25 in May, May 17. One of the things that's written here,
26

Direct-Brooms-Rubinowitz

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2 I'm going to highlight this is, "Unable to leave accident
3 scene without assistance". You knew that was referring to
4 Ms. Park, correct?

5 A. Correct.

6 Q. So, you now had over three months to think
7 about the accident, right?

8 A. Correct.

9 Q. And you now had approximately 90 days to
10 consider what to write down in how the accident occurred,
11 right?

12 A. Correct.

13 Q. Honesty would require you, wouldn't it, sir,
14 to write down, I never saw her?

15 A. Right.

16 Q. And that's something you didn't do, true?

17 A. Correct.

18 Q. Honesty would require you to write down, I
19 have no idea where she came from, true?

20 A. Correct.

21 Q. And that's something you didn't do, true?

22 A. Correct.

23 Q. When it comes to the accident itself, sir,
24 you sat here through the opening statements, didn't you?

25 A. I did.

26 Q. You heard me speak and then you heard your

Direct-Brooms-Rubinowitz

1 attorney?

2 A. Yes.

3 Q. Ms. Dicola speak?

4 A. Correct.

5 Q. With respect to the van that you were driving
6 on the very day of the accident, this was the van, if I
7 may direct your attention to this exhibit, Plaintiff's
8 Exhibit No. 2, this is the van that you were driving on
9 the day of the accident, correct?
10

11 A. Yes.

12 Q. How long is this van?

13 A. About 20 feet, 18 to 20 feet.

14 Q. When did you find that out?

15 A. I don't know the exact time.

16 Q. Did you ever measure it?

17 A. I did.

18 Q. After the depositions in this case?

19 A. Yes.

20 Q. Because at the time of the depositions, when
21 you were asked that question, you didn't know, correct?

22 A. I didn't.

23 Q. If I may, sir, when your attorney opened in
24 this case, she said you relied on your mirrors, both the
25 side view and the -- side view mirrors and the rearview
26 mirror, correct? You heard that, didn't you?

1 Direct-Brooms-Rubinowitz

2 A. I'm not sure if I heard that part.

3 Q. Did you hear her say that you relied on the
4 windshield, the side view mirrors as well as your rearview
5 mirror? Did you hear her say that?

6 A. I heard her say the mirrors and side view
7 mirrors the rearview, I'm not sure.

8 Q. Did you rely on the rearview mirrors?

9 A. Two side mirrors.

10 Q. There is no rearview mirror, correct?

11 A. In the van, I can't remember if that one has
12 one or not.

13 MR. RUBINOWITZ: I ask that this be marked
14 for identification, please.

15 (Whereupon the photograph was marked for
16 identification as Plaintiff's Exhibit No. 12 as of
17 this date.)

18 Q. That's your van that you were driving on the
19 day of the accident, showing the rear portion of it, true?

20 A. Yes.

21 Q. And that's a fair and accurate representation
22 of the van? Indeed it is the van, right?

23 A. Yes.

24 MR. RUBINOWITZ: I'll be offering it into
25 evidence. I want to show it to counsel, if I may.

26 MS. DICOLA: There is no objection.

1 Direct-Brooms-Rubinowitz

2 THE COURT: Without objection, it is admitted
3 into evidence.

4 (Whereupon Plaintiff's Exhibit No. 12 was
5 marked received in evidence as of this date.)

6 Q. Sir, I just put up a photograph that we just
7 marked into evidence of the rear portion of the van.
8 There are no windows on this van, correct?

9 A. Correct.

10 Q. In the back, right?

11 A. Correct.

12 Q. So, the rearview mirror wouldn't work at all,
13 correct?

14 A. Correct.

15 Q. You would rely on the side view mirrors if
16 you were looking at them, true?

17 A. Correct.

18 Q. Now, with respect to this van, the
19 windshield, how big is that?

20 A. I'm not sure.

21 Q. As far as the height from the bottom to the
22 top (pointing), where I'm pointing now from the windshield
23 wipers coming up to the roof, how high is that?

24 A. I don't know, sir.

25 Q. Do you know if it's two feet, three feet,
26 four feet?

Direct-Brooms-Rubinowitz

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- 2 A. Do you want me to guess, sir?
- 3 Q. Best estimate, sir.
- 4 A. I'm not sure.
- 5 Q. Can you tell us if -- if it's ten feet or two
6 feet?
- 7 A. Maybe two feet.
- 8 Q. And as far as coming across from side to
9 side, from the driver's side door to the passenger door?
- 10 A. Maybe four feet, maybe.
- 11 Q. The width of the car, width of the van, four
12 feet?
- 13 A. Is the question, is the width of the van four
14 feet?
- 15 Q. Yeah.
- 16 A. Could be.
- 17 Q. In other words, the windshield goes the whole
18 width of the van, correct?
- 19 A. More or less, yes.
- 20 Q. And your best estimate is that's about four
21 feet?
- 22 A. I guess it could be.
- 23 Q. How about this bumper (indicating), any idea
24 how high that is from the floor?
- 25 A. No, I don't.
- 26 Q. Do you know if it's the same height as, for

Direct-Brooms-Rubinowitz

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2 example, your knee?

3 A. I don't know.

4 Q. With respect to this accident, isn't it true,
5 sir, that you do not know how this accident occurred?

6 A. I do not know.

7 Q. If you could speak up a little bit.

8 A. No. No, I do not.

9 Q. Isn't it true that all you know is that the
10 pedestrian was struck by the van, correct?

11 MS. DICOLA: Objection.

12 THE COURT: Sustained.

13 Q. Isn't it true, sir, that the only thing you
14 know, I'm asking specifically this way, the only thing you
15 know is that the pedestrian was struck by the van?

16 A. I can't answer that question.

17 MS. DICOLA: Objection. It's the same
18 question.

19 THE COURT: As to -- Are you asking about the
20 mechanism of the accident?

21 MR. RUBINOWITZ: Yes.

22 THE COURT: Okay. Limited to the mechanism
23 of the accident.

24 THE WITNESS: As far as impact?

25 THE COURT: Leading up to the accident, yes.

26 A. Struck, no.

Direct-Brooms-Rubinowitz

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2 Q. You don't know anything about the happening
3 of the accident, do you?

4 A. You asked me if it was struck.

5 Q. You know that you hit a pedestrian, true?

6 MS. DICOLA: Objection.

7 THE COURT: Overruled.

8 Q. You know that you hit a pedestrian, right?

9 A. There was contact with the vehicle, yes.

10 Q. Are you saying the pedestrian walked into
11 you?

12 A. I don't know how the accident happened, sir.

13 Q. You have no idea, right?

14 A. No.

15 Q. When you just told us, I have no idea how the
16 accident happened, in the event you were being completely
17 honest, wouldn't you have to put that down in the report
18 that you filled out to the Department of Transportation?

19 A. Yes.

20 Q. And you did not do that, right?

21 A. I didn't.

22 Q. And that would have been the honest thing to
23 do, true?

24 A. Correct.

25 Q. Something you didn't do, right?

26 A. I didn't.

Direct-Brooms-Rubinowitz

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2 Q. If you take a look at Plaintiff's Exhibit 5.
3 Can you see this, sir, if I put this up here (indicating)?

4 A. Yes.

5 MR. RUBINOWITZ: And I am going to ask for
6 permission to write on this so I could put down
7 certain direction signals on it, directly on the
8 exhibit?

9 MS. DICOLA: I'm sorry. What are you going
10 to do?

11 MR. RUBINOWITZ: This exhibit as far as the
12 streets and the directions.

13 MS. DICOLA: No objection to that.

14 Q. Sir, where I'm pointing right now, we can
15 agree this is 31st Street, correct?

16 A. Yes.

17 Q. I'm going to write 31st Street right on it
18 (indicating). And this runs westbound, correct?

19 A. Yes.

20 Q. And I wrote west with an arrow.

21 THE COURT: Let the record reflect the
22 markings.

23 MR. RUBINOWITZ: It's actually on the exhibit
24 reflecting it.

25 THE COURT: All right. Just so the exhibit
26 is -- the record is clear as to who wrote what.

1 Direct-Brooms-Rubinowitz

2 MR. RUBINOWITZ: Okay. Thank you, judge.

3 Q. If I may, where I'm pointing right now, this
4 is Sixth Avenue, correct?

5 A. Yes.

6 Q. Sixth Avenue runs one way uptown, right?

7 A. North, yes.

8 Q. Just wrote an N with an arrow for north on
9 the exhibit. We can agree that you were coming from
10 sought to north, right?

11 A. Yes.

12 Q. In this lane, right?

13 A. Yes.

14 Q. Closest lane to the bicycle lane, true?

15 A. Yes.

16 Q. Just going to write down your name Brooms
17 with an arrow as to which direction you were coming first,
18 all right.

19 A. Okay.

20 Q. Is that right?

21 A. Yes.

22 Q. Okay. And your intent was to come and make a
23 left turn, true?

24 A. Yes.

25 Q. Now, one of the things that you knew is that
26 this was rush hour, correct?

Direct-Brooms-Rubinowitz

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A. Correct.

Q. Many pedestrians around, right?

A. Correct.

Q. You knew you had to be careful for pedestrians, true?

A. Yes.

Q. You knew, in fact, one of the things you had to do was always watch out for pedestrians, true?

A. Yes.

Q. To the extent you didn't do that, that would be improper, am I right?

MS. DICOLA: Objection.

THE COURT: Sustained.

Q. While you were driving, one of the things that you continually would have to do is to scan, correct?

A. Yes.

Q. You would have to scan to your right and to your left, true?

A. Yes.

Q. And, in fact, sir, one of the things that you know is, you're going to be making a left? You're going to be crossing pedestrian crosswalks, correct?

A. Yes.

Q. Had you ever driven in this area before?

A. Yes.

Direct-Brooms-Rubinowitz

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- 2 Q. How many times?
- 3 A. I don't know, sir.
- 4 Q. More than a hundred?
- 5 A. No.
- 6 Q. More than ten?
- 7 A. I don't know, sir. I've driven in Manhattan.
- 8 Q. I'm talking about this particular
- 9 intersection prior to the day of the accident.
- 10 A. I don't know.
- 11 Q. You can't say whether you've been there once,
- 12 can you?
- 13 A. I've been there maybe once in the area, yes.
- 14 Q. In fact, when you were driving on this
- 15 particular day, there was no rain, true?
- 16 A. True.
- 17 Q. Roads were dry, am I right?
- 18 A. Yes.
- 19 Q. But you knew that there was traffic, true?
- 20 A. Yes.
- 21 Q. You came from Queens, right?
- 22 A. Yes.
- 23 Q. Were you coming from the shop or were you
- 24 coming from your home?
- 25 A. From the shop.
- 26 Q. How long did it take you to get into

Direct-Brooms-Rubinowitz

1
2 Manhattan?

3 A. I don't recall the time.

4 Q. Did you take more than an hour to get in?

5 A. Less than an hour.

6 Q. Approximately how many miles did it take to
7 get into Manhattan?

8 A. Approximately seven.

9 Q. And when you came in, did you know exactly
10 where you were going?

11 A. I didn't.

12 Q. When you say you didn't, you didn't know
13 which -- where you were headed, true?

14 A. Correct.

15 Q. Did you know what time you had to be there?

16 A. There was no time.

17 Q. You were going to be checking up on the work
18 that was done prior to that day, right?

19 A. Correct.

20 Q. One of the things you have to do is you have
21 to watch out for where the pedestrians are crossing if
22 you're going to be making a turn anywhere in Manhattan,
23 right?

24 A. Repeat that question.

25 Q. Sure. Wherever you're driving in Manhattan,
26 any time you're going to be making a turn, one of the

Direct-Brooms-Rubinowitz

1 things you as a driver have to do is watch for
2 pedestrians, right?

3 A. Yes.

4 Q. At all times, right?

5 A. Yes.

6 Q. Now, as you're driving, in the event there
7 are pedestrians already in the crosswalk, you let them
8 pass, right?

9 A. Correct.

10 Q. You know they have the right-of-way, true?

11 MS. DICOLA: Objection.

12 THE COURT: Sustained.

13 Q. In the event you know the pedestrians are in
14 the crosswalk, you would less them pass without question,
15 right?

16 A. Correct.

17 Q. You would have to continually scan, true?

18 A. Correct.

19 Q. Now, you know that you were in contact with
20 Ms. Park, correct?

21 A. When it happened.

22 Q. You know that your van made contact with
23 Ms. Park, correct?

24 A. Yes.

25 Q. One of the things that you don't know is
26

1 Direct-Brooms-Rubinowitz

2 exactly where it took place, right?

3 A. Exactly where it took place, no.

4 Q. In fact, sir, one of the things you didn't do
5 is you didn't time how long it took you to make the turn,
6 correct?

7 A. The time, no, sir.

8 Q. But one of the things that we know is, isn't
9 it true that Ms. Park was in the area where I'm pointing
10 right now, almost three quarters of the way across, coming
11 from north to south (pointing)? Wasn't she about three
12 quarters of the way across?

13 MS. DICOLA: Objection.

14 THE COURT: Okay. The objection is
15 overruled.

16 Q. Wasn't she about three quarters of the way
17 across at the point of contact?

18 A. No, sir.

19 Q. Are you saying she was in the middle?

20 A. No, sir.

21 Q. You don't know where she was, do you?

22 A. Wasn't in the crosswalk, sir.

23 Q. Are you saying she was way outside the
24 crosswalk, someplace up here, where I wrote the words 34th
25 Street?

26 A. No, sir.

Direct-Brooms-Rubinowitz

1
2 Q. You don't know how far out of the crosswalk
3 she was, do you?

4 A. She was out of the crosswalk, sir.

5 Q. Something you've never seen, right?

6 A. Excuse me?

7 Q. You never saw her, right?

8 A. When I made the contact, I stopped and got
9 out of the van and she was not in the crosswalk.

10 Q. Did it occur to you that perhaps when the van
11 hit her, it pushed her out of the crosswalk?

12 A. The van didn't hit her, sir.

13 Q. The van didn't hit her at all now, right? Is
14 that what you're telling us?

15 A. We had contact.

16 Q. In other words, the van didn't hit her. This
17 is what you're representing to our jury, the van did not
18 hit her?

19 A. There was contact.

20 Q. In fact, sir, when you say there was contact,
21 one of the things that would happen would be there would
22 be contact, right? Do you know where your foot was at the
23 moment of contact, your right foot?

24 A. I don't know, sir.

25 Q. Do you know if it was on the gas?

26 A. The moment of contact, the foot was on the

Direct-Brooms-Rubinowitz

1
2 gas, yes.

3 Q. Then you put your foot on the brake?

4 A. When I felt contact, yes.

5 Q. How long did it take you to put your foot on
6 the brake after contact?

7 A. A second.

8 Q. Do you know how far your van moved in that
9 portion of time?

10 A. No.

11 Q. Do you know if it moved more than ten feet?

12 A. Ten feet, no, sir.

13 Q. Well, from the point in time when you felt
14 that contact to the point that you stopped, how far did
15 the van move?

16 A. Not ten feet.

17 Q. How far?

18 A. I don't know how far it moved to.

19 Q. An inch?

20 A. Maybe more than an inch.

21 Q. Two inches?

22 A. I don't know, sir.

23 Q. Sir, when you filled out those accident
24 reports, the first one, you didn't fill out enough
25 information. The one you filled out on the day of the
26 accident and three days after the accident you didn't put

Direct-Brooms-Rubinowitz

1
2 down enough information, right?

3 A. Correct.

4 Q. Somebody wanted you to do another report,
5 correct?

6 A. Correct.

7 Q. Mr. Schraft?

8 A. Correct.

9 Q. The vehicle coordinator?

10 A. Yes.

11 Q. And David Allen told you to do that, right?

12 A. Yes.

13 Q. Your supervisor, right?

14 A. Yes.

15 Q. So, when you filled out the one three months
16 later, you had the opportunity to draw a diagram, correct?

17 A. Yes.

18 Q. And you did draw a diagram, right?

19 A. I did.

20 Q. At that point in time did you know anything
21 about the injuries suffered by Ms. Park?

22 A. I didn't.

23 Q. The only thing you knew is she was taken away
24 in an ambulance, right?

25 A. Yes.

26 Q. You knew she was unable to leave on her own,

Direct-Brooms-Rubinowitz

1
2 true?

3 A. Correct.

4 Q. Let's take a look at the diagram you drew.
5 I'm going to zoom in on it. This is from the date
6 May 17th, 2013. Where I'm pointing right now, sir, Sixth
7 Avenue, right?

8 A. Yes.

9 Q. That's Sixth Avenue right here, the same
10 thing, Sixth Avenue, right?

11 A. Right.

12 MR. RUBINOWITZ: I'm going to write Sixth
13 Avenue right on the exhibit here so there is no
14 question about it. Sixth Avenue.

15 MS. DICOLA: I'm sorry. This one is clearer.

16 MR. RUBINOWITZ: Counsel provided a clearer
17 one, so I'm going to use this as well.

18 Q. There is a P that's written there, correct?

19 A. Correct.

20 Q. That P that's written there, just going to
21 highlight this, that's for the pedestrian, correct?

22 A. No, sir.

23 Q. What is the P for?

24 A. The P is for the arrow pointing towards the
25 dot, which is the pedestrian.

26 Q. Pointing towards what?

Direct-Brooms-Rubinowitz

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A. The dot.

Q. The dot?

A. Can I show you?

Q. Please.

A. P with an arrow to this right there
(indicating).

Q. I see. So, you drew a P and then you have
another box over here, and then you have something over
here, right?

A. Correct.

Q. Isn't the truth, sir, when you were making
the turn, one of the things that would happen is you would
have to know exactly where the pedestrian was if you saw
what happened, right?

A. Correct.

Q. You didn't see her, did you?

A. I didn't.

Q. And you don't know, for example, if you were
looking at your right side view mirror at the time of
contact, correct?

A. Correct.

Q. And knowing that you don't know if you were
looking at the right side view mirror at the time, the
very front left of your van might have struck the
pedestrian, because you weren't looking that way?

1 Direct-Brooms-Rubinowitz

2 MS. DICOLA: Objection.

3 THE COURT: Overruled.

4 Q. True? In other words, you're looking to your
5 right if you're looking in the right side mirror of the
6 van, correct? There is a mirror like this on the other
7 side, correct?

8 A. Correct.

9 Q. And if you're looking at the right side
10 mirror, that means you're not looking at the front left of
11 your van, true?

12 A. Correct.

13 Q. So, you wouldn't know if you struck her with
14 the front left of your van if you're looking at the right
15 side mirror, correct?

16 A. I would feel it.

17 Q. I'm asking if you saw it.

18 A. I didn't see it, no, sir.

19 Q. In fact, sir, if she then fell down, after
20 being struck with the front of the vehicle, she would then
21 be knocked to the ground, correct?

22 MS. DICOLA: Objection.

23 THE COURT: Overruled.

24 Q. Correct?

25 A. Okay. Yes.

26 Q. And then the wheel would go over her. And

Direct-Brooms-Rubinowitz

1 that would be something you would feel, correct?

2 MS. DICOLA: Objection.

3 THE COURT: Sustained.

4 Q. Sir, one of the things that you know is you
5 felt a thump, correct?

6 A. Yes.

7 Q. You've described that, if I may, at the
8 deposition as sort of going over a traffic cone, right?

9 A. Yes.

10 Q. But you know it wasn't a traffic cone now.
11 You know it was a human body, correct?

12 A. Yes.

13 Q. It was Ms. Park, true?

14 A. Yes.

15 Q. In fact, at the point in time when you felt
16 that thump, you can't state with certainty whether the
17 front of the vehicle didn't make contact first, correct?

18 A. No. I said I didn't, sir.

19 MS. DICOLA: Objection.

20 Q. You know it for a fact?

21 A. Yes.

22 Q. Something you didn't see though, right?

23 A. I felt a thump, sir.

24 Q. I understand that. With the wheel, correct?

25 A. With the wheel, yes.
26

Direct-Brooms-Rubinowitz

1
2 Q. Wouldn't you agree with me that before the
3 wheel goes over her, she would have to be knocked down?

4 A. Correct.

5 MS. DICOLA: Objection.

6 THE COURT: Overruled.

7 Q. Wouldn't you agree with me before the wheel
8 goes over her, she would have to be knocked down?

9 A. I don't know, sir.

10 Q. Wouldn't it make sense to you, sir, that
11 before the wheel goes over her, she would have to be
12 knocked down?

13 MS. DICOLA: Objection.

14 THE COURT: Sustained.

15 Q. In fact, sir, one of the things that you
16 don't know is exactly where the pedestrian was, Ms. Park,
17 because you never saw her, right?

18 A. I didn't see her.

19 Q. How much does your vehicle weigh?

20 A. I don't know, sir.

21 Q. Would you agree it would have to be thousands
22 of pounds?

23 A. Yes.

24 Q. And if it makes contact with somebody who
25 weighs 110 pounds, wouldn't you agree with me that the
26 force would push her forward?

1 Direct-Brooms-Rubinowitz

2 MS. DICOLA: Objection.

3 THE COURT: Overruled.

4 Q. Wouldn't you agree with that, sir? The force
5 of a many thousand pound vehicle hitting a person who
6 weighs 110 pounds would push them forward?

7 MS. DICOLA: Objection.

8 THE COURT: Overruled.

9 Q. Yes?

10 A. It's possible, yes.

11 Q. And in the event that she's struck in the
12 crosswalk and you hit her in the crosswalk, your vehicle
13 would then push her forward, true?

14 MS. DICOLA: Objection.

15 THE COURT: Sustained.

16 Q. Would you know that, sir?

17 MS. DICOLA: Objection.

18 THE COURT: Ask whether he knows it.

19 A. I wouldn't know.

20 Q. Are you saying, sir, that at the point where
21 the vehicle -- Withdrawn. Are you saying at the point
22 where you heard that thump, you came to an instant stop?

23 A. Within a second or two I put my foot on the
24 brake, yes.

25 Q. Let's take a second or two.

26 A. Okay.

Direct-Brooms-Rubinowitz

- 1
- 2 Q. You know how fast you were going?
- 3 A. I don't.
- 4 Q. Do you know if you were going ten miles an
5 hour?
- 6 A. I wasn't.
- 7 Q. What?
- 8 A. I wasn't, sir.
- 9 Q. You weren't?
- 10 A. No.
- 11 Q. Do you know if you were going five miles an
12 hour?
- 13 A. I don't know.
- 14 Q. Do you know how far your van would have gone
15 in two seconds if you were going five miles an hour?
- 16 A. I don't.
- 17 Q. When you drew this diagram, sir, this is
18 the -- did you write any place that this is the final
19 resting point of the pedestrian?
- 20 A. Say it again.
- 21 Q. Did you write any place in this diagram that
22 this is the final resting point of the pedestrian
23 (gesturing)?
- 24 A. I didn't.
- 25 Q. Did you write that this is the point of
26 impact?

Direct-Brooms-Rubinowitz

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A. I didn't.

Q. So when they told you to make sure that we now have a clear diagram of where the pedestrian was, you didn't spell out again what you believe took place, correct?

MS. DICOLA: Objection.

THE COURT: Sustained.

Q. Sir, tell us why you didn't write out anything about what that P represents.

A. The question was asking me when they asked me to put what? I'm mixed up.

Q. It says, it says right under here one of the things you know they are trying to do is find out how did the accident happen, right? Right?

A. From the diagram?

Q. Sir, you understood, if I may. Take a look at the diagram. You understood this entire report was to actually try and understand how the accident happened, right?

A. Correct.

Q. And we have already covered, if I may, that in fact nowhere on this report, in any key, in any writing, any place did you write, I never saw her. I don't know where she came from at all. True?

A. True.

Direct-Brooms-Rubinowitz

- 1
- 2 Q. Your vehicle comes to a stop, right?
- 3 A. Yes.
- 4 Q. When your vehicle comes to a stop, when for
- 5 the first time did you realize I've run over a pedestrian?
- 6 A. I looked in my mirror.
- 7 Q. Which mirror?
- 8 A. The driver's side.
- 9 Q. And when you looked in the driver's side
- 10 mirror, were you able to see her behind you?
- 11 A. Yes.
- 12 Q. How far behind you was she?
- 13 A. I'm not sure.
- 14 Q. Was she more than ten feet behind you?
- 15 A. Not sure.
- 16 Q. Approximately?
- 17 A. I can't say.
- 18 Q. Was she a van length behind you?
- 19 A. Not a van length, no. Not a van length, no.
- 20 Q. A half a van length behind you?
- 21 A. I can't say.
- 22 Q. How far did you stop from the western most
- 23 cross -- crosswalk line (indicating)? In other words, how
- 24 far west were you?
- 25 A. Oh, about a car length.
- 26 Q. One car length?

Direct-Brooms-Rubinowitz

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A. About a car length, yeah.

Q. A car length about ten, 15 feet,
approximately?

A. You want me to guess?

Q. Approximately.

A. I'm not sure.

Q. You're saying a car length. Give the jury
your best estimate as to what a car length is, since you
used a car length.

A. Sorry. A van then. My van length.

Q. Give us your best estimate as to what that
is.

A. Twenty.

Q. Could it be 15?

A. Eighteen, 20 feet.

Q. And we can agree that your vehicle rolled
forward after the impact, true?

A. Correct.

Q. How far did your vehicle roll forward after
the impact?

A. I don't know, sir.

Q. Do you know if it was more than half a van
length?

A. I don't know, sir.

Q. Do you know if it was a whole van length?

Direct-Brooms-Rubinowitz

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A. No, sir.

Q. Because if it was a whole van length, right, if it was a whole van length, that means the contact occurred in the crosswalk, true?

A. I wouldn't know that, sir.

Q. Well, you just told us that you came to a stop about a car length is what you said first, and then you said a van length west of the crosswalk line, didn't you?

A. I was talking about my van. The car length was wrong.

Q. I understand what you said. I'm repeating what you said for clarity.

A. Okay.

Q. And what you first said was a car length. Then you changed it to a van length right before us, didn't you?

A. Yes.

Q. So, if you came to a stop about one van length west of this western most crosswalk line --

MR. RUBINOWITZ: And I'm going to be clear on this. I'm going to write down what I mean by the western most crosswalk. Line, I'll write it down there. And I wrote western most crosswalk so there is no confusion.

Direct-Brooms-Rubinowitz

1
2 Q. If your vehicle came to a stop approximately
3 one van length --

4 A. Mm-hmm.

5 Q. -- from this western most car -- crosswalk
6 line, my question to you is, how far did your vehicle go
7 after you heard the thump?

8 A. Sir, you confuse me now. Initially you asked
9 me about once I felt the thump, how far I went forward.
10 Now you're telling me how far am I from the crosswalk
11 after the --

12 (Continue on the next page.)
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1 Brooms-Plaintiff-Direct

2 Q. Sir, you've told us your vehicle came to a
3 stop one van length from the western most crosswalk
4 line. You've told us that just now, correct?

5 A. I'm getting confused.

6 Q. Let's see if we could straighten it out, sir.
7 Didn't you say specifically your van came to a stop one
8 van length from this crosswalk line the western most
9 crosswalk line?

10 A. That question I answered I thought we were
11 talking about after impact after the accident. I
12 thought that was the question you were asking me.

13 Q. Sir, where did your vehicle come to a stop?

14 A. I don't know how far from the crosswalk. I
15 couldn't tell you.

16 Q. And I'm asking you isn't it true it was
17 approximately one van length from approximately the
18 western most crosswalk line?

19 A. I can't answer.

20 Q. Isn't it true sir that in fact if you hear a
21 thump you then take your foot from the gas to the
22 brake, the vehicle is rolling forward westbound, true?

23 A. Yes.

24 Q. So your vehicle would continue to move
25 westbound, right?

26 A. Down the block, yes.

1 Brooms-Plaintiff-Direct

2 Q. And my question is where was your van at the
3 point in time where you heard the thump?

4 A. When I felt the thump?

5 Q. Yes.

6 A. I was somewhere around from the picture,
7 somewhere around that car and the truck in the picture.

8 Q. So now we're even further down the road.
9 We're going further down each time, right?

10 MS. DICOLA: Objection.

11 THE COURT: Sustained.

12 MS. DICOLA: Move to strike.

13 THE COURT: Jury is to disregard
14 comment, counsel's comment.

15 Q. You told us about one van length before,
16 true?

17 That's where you came to a stop. You did
18 tell the jury that, did you?

19 A. I thought we were talking about the impact.
20 Said I was confused, sir.

21 Q. At your deposition sir which was taken in
22 July of 2014 about a year and a half after the
23 accident, were you asked these questions and did you
24 give these answers page 139, 140?

25 MS. DICOLA: There is no pending
26 question objection.

1 Brooms-Plaintiff-Direct

2 THE COURT: What, what is it?

3 MS. DICOLA: It's improper impeachment.

4 He didn't ask a question upon which he could
5 impeach him at this point. If he want to read it
6 in he could do it on his case in chief. He has
7 not laid a proper foundation to impeach which I
8 presume is what he's about to do.

9 THE COURT: I disagree.

10 MR. RUBINOWITZ: Thank you.

11 Q. Were you asked this question and did you give
12 this answer under oath. Page 139, 140 starting at line
13 25.

14 "QUESTION: However, when the accident
15 happened and you stopped your van and you got out,
16 you could see generally the map and space that was
17 between the back of your van and the western
18 crosswalk; is that correct?"

19 "ANSWER: As far as footage, I don't
20 know."

21 Did you give that answer then?

22 A. Yes.

23 Q. So the truth is you don't know how far your
24 van was, true?

25 MS. DICOLA: Objection, your Honor.

26 THE COURT: No, he mentioned that it was

1 Brooms-Plaintiff-Direct

2 up by the car, the van, the truck.

3 MS. DICOLA: The question.

4 MR. RUBINOWITZ: Judge, this is improper
5 for her to make statements.

6 MS. DICOLA: I would like to be heard,
7 your Honor.

8 THE COURT: Okay. Your objection is
9 noted for the record. Continue.

10 Q. So the truth is sir you don't know footage,
11 true?

12 A. I don't.

13 Q. But when you take a look at the diagram you
14 drew, you were trying to be accurate, correct?

15 A. Yes.

16 Q. You said that you saw Ms. Park through the
17 left side view mirror?

18 A. Yes.

19 Q. Where was she?

20 A. On the ground.

21 Q. What did she look like?

22 A. I don't know, sir.

23 Q. When did you recognize that you struck a
24 human being?

25 A. I seen the commotion and I got out of the
26 van. I seen people going over towards her and she was

1 Brooms-Plaintiff-Direct

2 on the floor.

3 Q. Did you go over to offer assistance to her?

4 A. I didn't.

5 Q. Did anyone prevent from you offering
6 assistance to her knowing that you just went over her
7 with your van?

8 MS. DICOLA: Objection.

9 THE COURT: Overruled.

10 Q. Anyone prevent from you going over to prevent
11 you from offering assistance or comfort to her?

12 A. I couldn't offer assistance.

13 Q. Did you even go over to ask if she was okay?

14 A. I didn't.

15 Q. Did anything prevent from you doing that?

16 A. I went to call 911.

17 Q. Did anyone prevent from you going over to
18 her, sir?

19 A. No, Sir.

20 Q. How far behind your van was she at this
21 point?

22 A. I don't know, sir.

23 Q. Was she two feet?

24 A. I don't know, sir.

25 Q. Was she ten feet?

26 A. I don't know sir.

1 Brooms-Plaintiff-Direct

2 Q. How far behind -- withdrawn. How far from
3 the western crosswalk line was she?

4 A. I don't know.

5 Q. Was she two feet?

6 A. I don't know, sir.

7 Q. Was she one feet?

8 A. I don't know.

9 Q. Was she a half a foot away from the crosswalk
10 line?

11 A. I don't know.

12 Q. So you know it's something more than one
13 foot, right?

14 A. Correct.

15 Q. Do you know if she rolled at all when your
16 van went over?

17 A. I don't know.

18 Q. Was she screaming?

19 MS. DICOLA: Objection.

20 THE COURT: Was she screaming?

21 Q. Was she screaming?

22 A. I don't know, sir.

23 Q. Did you care?

24 MS. DICOLA: Objection.

25 THE COURT: Sustained.

26 A. Yes, Sir. I cared.

1 Brooms-Plaintiff-Direct

2 Q. And knowing that you cared did you go over to
3 her?

4 A. I was calling for --

5 Q. Did you go over to her?

6 A. I didn't sir.

7 Q. At any point in time before the ambulance got
8 there --

9 A. I didn't.

10 MR. RUBINOWITZ: Judge, could we break
11 now please.

12 THE COURT: Sure. I will see you back
13 here at 2:10.

14 MR. RUBINOWITZ: Thank you, Judge.

15 COURT OFFICER: All rise. Jury exiting.

16 THE COURT: My basic directive is you
17 could have lunch with whomever you want. Just
18 don't talk about your testimony okay.

19 THE WITNESS: Okay.

20 THE COURT: Okay.

21 (Whereupon, a luncheon recess is taken)

22 AFTERNOON SESSION

23 (Continued on the next page)

24

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1 Direct-Brooms-Rubinowitz

2 (Whereupon a luncheon recess was taken.)

3 THE COURT: You are reminded, sir, you are
4 still under oath.

5 COURT OFFICER: All rise. Jury entering.

6 (Whereupon the jury panel entered the
7 courtroom.)

8 THE COURT: Please be seated.

9 MR. RUBINOWITZ: May I, judge?

10 THE COURT: Yes.

11 MR. RUBINOWITZ: Thank you.

12 Q. Mr. Brooms, before we broke for lunch I was
13 asking you about how far your van had stopped from the
14 western most crosswalk line. Isn't it correct to say that
15 it was approximately one van length?

16 A. From the crosswalk?

17 Q. Yes.

18 A. I can't say a hundred percent.

19 Q. In your deposition, sir, directing your
20 attention to page 139 and 140, starting on 139, line 25.
21 I want to read the sequence of questions that you were
22 asked by your attorney, Mr. Orcutt at the time of the
23 deposition, back on July 29th, 2014. You would agree with
24 me at that time it was closer to the accident than today,
25 true?

26 A. Yes.

Direct-Brooms-Rubinowitz

1
2 Q. You would agree with me that your memory was
3 better than concerning the accident than it is today,
4 true?

5 A. Yes.

6 Q. In fact, your memory is not getting better as
7 time goes by, fair enough?

8 A. Yes.

9 Q. Here are the questions I want to read and I
10 want to ask you whether you agree with them.

11 "QUESTION: However, when the accident
12 happened, and you stopped your van, and you got out,
13 you could see generally the amount of space that was
14 between the back of your van and the western
15 crosswalk, is that correct?

16 "ANSWER: As far as footage, I don't know.

17 "QUESTION:" by Mr. Orcutt. "Not the exact
18 amount you could see, that there was space between
19 the back of your van and the western crosswalk?

20 "ANSWER: Yes. Like a van length.

21 "QUESTION: When you were -- you and I were
22 discussing it, you told me", this is Mr. Orcutt
23 asking the question, "when you and I were discussing
24 it, you told me it was approximately the length of
25 your van, the amount of space between your van and
26 the crosswalk?

1 Direct-Brooms-Rubinowitz

2 "ANSWER: Yes."

3 Were those answers truthful when you gave
4 them?

5 A. Yes.

6 Q. Now, isn't it true then that we can agree
7 that your van came to a stop approximately a van length
8 from the western most crosswalk line?

9 A. Yes.

10 Q. And we can also agree then that Ms. Park was
11 behind your van, correct?

12 A. Yes.

13 Q. You don't know if she was, for example, a
14 foot or two from the crosswalk line, correct?

15 A. From the line, I don't know where she was,
16 no.

17 Q. Okay. And you don't know where she was from
18 the back of your van, right?

19 A. No.

20 Q. But you do know she had to be someplace in
21 the area where I'm pointing right now, the crosswalk line,
22 right?

23 A. She was behind my van. I don't know.

24 Q. You don't know where she was, right?

25 A. Right.

26 Q. Because you didn't see and you can't say,

Direct-Brooms-Rubinowitz

1
2 fair enough?

3 A. I seen her by my van. I don't know the
4 distance, no.

5 Q. And you made no notes of that of any kind,
6 right?

7 A. No.

8 Q. That's correct?

9 A. Yes, no notes.

10 Q. Okay. I would like to show you these two.
11 One is a little bit bigger than the other.

12 MR. RUBINOWITZ: I'll mark them in sequence
13 with an A on one of them, okay?

14 MS. DICOLA: No objection.

15 (Whereupon the blown up photograph was marked
16 received in evidence as Plaintiff's Exhibit No. 13 as
17 of this date.)

18 (Whereupon the photograph was marked received
19 in evidence as Plaintiff's Exhibit No. 13-A as of
20 this date.)

21 Q. With respect to this photograph, which we
22 have been using, which has the West 31st Street on it,
23 where I've written western most crosswalk line. With
24 respect to this, we know, based on the testimony you gave
25 at the time of the deposition, your van came to a stop
26 approximately one van length away from the western most

Direct-Brooms-Rubinowitz

1 crosswalk line, true?

2 A. Yes.

3 Q. Okay. We know that at some point you felt a
4 thump, right?

5 A. Yes.

6 Q. You didn't hear the thump though, right?

7 A. I felt the thump yes.

8 Q. I'm saying, you didn't hear it in fairness,
9 true?

10 A. Yes.

11 Q. Okay. So when you felt the thump, it was
12 then that you applied your brake, right?

13 A. Once I felt the thump, I took my foot off,
14 yes.

15 Q. You took your foot from the accelerator to
16 the brake, right?

17 A. Yes.

18 Q. And whatever time that took for you to take
19 your foot from the accelerator to the brake, your van was
20 continuing in a westbound direction, right?

21 A. It was going west, yes, it was.

22 Q. You don't know exactly where it was that you
23 took your foot off the gas pedal, true?

24 A. No, I don't.

25 Q. And you don't know exactly where it was that
26

1 Direct-Brooms-Rubinowitz

2 you put your foot on the brake, correct?

3 A. No.

4 Q. So, when I say you don't know where it was,
5 you don't know where in the street it was, but it had to
6 be as you were making a left-hand turn, correct?

7 A. I had to --

8 MS. DICOLA: Objection.

9 THE COURT: Overruled.

10 Q. It had to be as you were making a left-hand
11 turn right?

12 A. I completed my turn.

13 Q. In other words, you completed your turn
14 before you stepped on the brake?

15 A. Yes.

16 Q. You're sure of that?

17 A. Yes.

18 Q. Okay. But do you know exactly where it was,
19 where specifically it was when you felt the thump, that is
20 where your van was?

21 A. No. No.

22 Q. I want to show you what we have marked as
23 Exhibit 13-A. I'm going to put this here. It's a smaller
24 version of the same larger version of the same photo I'm
25 going to put up on the board for the jurors. This way
26 everybody can see exactly what it is, okay.

1 Direct-Brooms-Rubinowitz

2 Can we agree that where I'm pointing right
3 now, this is the direction that you were traveling in
4 northbound (indicating), correct?

5 A. Yes.

6 Q. Okay. And you were going to be making a turn
7 this way onto, as you were coming westbound, onto 31st
8 Street, right?

9 A. Yes.

10 Q. Where I'm pointing right now, do you see
11 this, this area right here (pointing)?

12 A. Yes.

13 Q. Do you know what that is?

14 A. That's a phone booth.

15 Q. Do you know if it's a phone booth or a bus
16 stop?

17 A. It looks like a phone booth from the picture.

18 Q. Whatever it is, whether it's a phone booth or
19 bus stop, can we agree it would block your view of the
20 intersection?

21 MS. DICOLA: Objection.

22 THE COURT: Overruled.

23 Q. Can we agree it would block your view of the
24 intersection as you're proceeding towards it?

25 A. From the picture?

26 Q. Yes.

Direct-Brooms-Rubinowitz

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A. Yes.

Q. And, indeed, sir, on the very day of the accident, there were rush hour travel pedestrians there, correct?

A. In the crosswalk, yes.

Q. You don't know which way they were going? Whether they were going north or south, correct?

A. Correct.

Q. With respect to the cars though, you were heading straight up Sixth Avenue, going to make your left-hand turn, right?

A. Yes.

Q. And when you were driving on Sixth Avenue, when for the first time did you look at the traffic light?

A. I can't remember.

Q. Did you look at all at the walk, don't walk signs for pedestrians?

A. I don't recall. I had the green light. I don't recall looking at the walk, don't walk.

Q. I'm just asking about the walk, don't walk.

A. No, I don't recall.

Q. You say you had the green light, correct?

A. Correct.

Q. And you would recognize, if you had the green light to continue northbound, pedestrians would have the

Direct-Brooms-Rubinowitz

1 right to cross north and south at the same time, right?

2 A. Correct.

3 Q. But if the light's turning from green to
4 yellow, you would have to consider that a caution,
5 wouldn't you?
6

7 A. Correct.

8 Q. And that's where you would be stopping,
9 right?

10 A. Correct.

11 Q. Now, when was the last time you looked at the
12 light before you made the left?

13 A. I don't recall, 'cause I made a turn.

14 Q. When was the last time you looked before you
15 made the turn?

16 A. Looked at what?

17 Q. Before you made the turn, when was the last
18 time you looked at the traffic light?

19 A. I couldn't see the light. I was focused on
20 the people in the crosswalk.

21 Q. When was the last time you looked at the
22 traffic light before you made the turn?

23 A. I didn't. I was looking at the crosswalk.

24 Q. So, we could agree, you didn't look at the
25 traffic light at all as you were making the turn, correct?

26 A. No, I didn't.

Direct-Brooms-Rubinowitz

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2 Q. And we could agree that you don't know when
3 you had last looked at the light before even starting to
4 make the turn, correct?

5 A. No.

6 Q. Correct?

7 A. No.

8 Q. You do know it?

9 A. I see it.

10 Q. When was the last time you looked at the
11 traffic light before making a turn?

12 A. I went to make the turn. I seen the light
13 and then I went to make a turn.

14 Q. When? When in terms of time?

15 A. Before. Before I started to make the turn I
16 looked at the light.

17 Q. Five seconds before?

18 A. Before I started making the turn.

19 Q. Ten seconds before?

20 A. No. I saw the light green, I made my turn.

21 Q. Do you know for sure?

22 A. The time, no, sir.

23 Q. You say you actually stopped your car, your
24 van at some point before making the turn?

25 A. Yes, sir.

26 Q. Did you actually count how long it took you

Direct-Brooms-Rubinowitz

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to stop?

A. Took me to stop, no, sir.

Q. How long did you stop for?

A. I'm not sure of the exact time.

Q. More than 20 seconds?

A. No.

Q. Sure of that?

A. Wasn't more than 20 seconds.

Q. Do you know if it was more than ten seconds?

A. More than ten seconds.

Q. For than 15 seconds?

A. I'm not sure how much.

Q. Where were you looking during that time?

A. At the crosswalk.

Q. How many people were in the crosswalk?

A. I'm not sure.

Q. Where were they going, northbound,
southbound?

A. Walking back and forth.

Q. How many people did you see?

A. Not sure, sir.

Q. At the point in time when you crossed over
the crosswalk, isn't it true you were looking at your side
view mirror?

A. No, sir.

Direct-Brooms-Rubinowitz

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2 Q. Did you look at your side view mirrors at all
3 as you were making a turn?

4 A. When I completed my turn.

5 Q. When you completed the turn?

6 A. Yes.

7 Q. In other words, it wasn't until you completed
8 the turn that you looked in the mirrors?

9 A. Yes.

10 Q. And you're sure of that, right?

11 A. Yes.

12 Q. As you made the turn, which mirror were you
13 looking at?

14 A. When I finished the turn?

15 Q. Yeah, which mirror were you looking at?

16 A. In -- in my front mirror, when I was driving,
17 I made the turn.

18 Q. When you say the front mirror, there is no
19 front mirror. It's either ride side or left side. We
20 have already established that, right?

21 A. Yes.

22 Q. So, there was no rearview mirror, right?

23 A. The front windshield.

24 Q. So, I'm asking which mirror you were looking
25 at.

26 A. When I made the turn?

Direct-Brooms-Rubinowitz

1 Q. Right or left side?

2 A. I can't remember a hundred percent.

3 Q. Isn't it true, sir, that the truth is you
4 don't know exactly where you were looking when you crossed
5 over the crosswalk, true?
6

7 A. I can't say a hundred percent, no, which
8 mirror I was looking out of.

9 Q. You can't say exactly where your head was
10 facing when you crossed over the crosswalk, true?

11 A. Correct.

12 Q. Thank you. In fact, you can't say exactly
13 where your head was facing when you felt that thump, true?

14 A. Correct.

15 Q. And you can't say exactly where your head was
16 facing two seconds before you felt that thump, true?

17 A. Correct.

18 Q. One of the things we know, sir, is that there
19 were a number of reports that you had prepared yourself
20 with no help from anybody else, right?

21 A. Correct.

22 Q. I want to ask you to tell this jury why in
23 this report (indicating), the one that has a 10-A on it,
24 the one dated the day of the accident, tell the jury
25 slowly and carefully why you did not write, I never saw
26 the pedestrian, nor where she came from?

Direct-Brooms-Rubinowitz

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A. I don't know why I didn't write it.

Q. What's your explanation for not writing it down there if you were trying to be honest like you say?

A. I have no explanation.

Q. You have no explanation?

A. No.

Q. Did you know that you had left something out that was very important?

A. At the time I didn't.

Q. So, there were many other reports. We have at least two other documents referring to this accident you filled out, right?

A. Yes.

Q. So, if I go to the, for example, the one that you filed with Albany, that you started to write on the very day of the accident and finished up two days after the accident, how did the accident happen, it's blank, correct?

A. Correct.

Q. I want you to tell the Court and jury slowly and carefully why you didn't write anything at all about not seeing the pedestrian, Ms. Park, or where she came from.

A. I don't know. I didn't write it.

Q. Now you had some more time. You told us you

1 Direct-Brooms-Rubinowitz

2 didn't think of it at the time. Now you had at least
3 another three days to think about it. Why didn't you
4 write anything then about the truth of what happened if
5 you were trying to be as honest as you say you were?

6 A. I don't know why I didn't write it.

7 Q. We know that certainly months had gone by by
8 the time you write the one on May 17th, 2013. When I say
9 "the one", I'm referring to the report, the MV-104 filed
10 with Albany. Here it has the same thing. How did the
11 accident happen. So, certainly you've now had three
12 months to think about the fact that you didn't write one
13 single word about the truthful answer that you never saw
14 the pedestrian, nor where she came from.

15 So my question to you is, tell the Court and
16 jury slowly and carefully why you didn't write one word
17 about that.

18 A. On that form?

19 Q. On that form.

20 A. I don't know why I didn't write it.

21 Q. Tell us, sir, and I want a complete
22 explanation, why on every single form that you filled out
23 didn't you write one single word that you never saw
24 Ms. Park, nor where she came from if you were trying to be
25 honest?

26 A. I don't know why I didn't write it.

Direct-Brooms-Rubinowitz

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2 Q. Isn't the truth, sir, that the reason you
3 didn't do this is because if you wrote that, it wouldn't
4 be something that would be in accord with the complete
5 defense you were creating in these documents?

6 MS. DICOLA: Objection.

7 THE COURT: Sustained.

8 Q. Well, sir, isn't it true that the documents
9 that you had written, putting the very first one, were
10 written to throw blame on the pedestrian, correct?

11 A. No, sir.

12 Q. In other words, somebody whose coming from
13 between two vans, coming from the south side of the street
14 between two vans, wouldn't be at fault if they came from
15 there and didn't let you see that?

16 MS. DICOLA: Objection.

17 THE COURT: Overruled.

18 A. I don't know what you mean, falling or not,
19 sir.

20 Q. So, you weren't trying to create anything
21 where you would leave an impression that Ms. Park was
22 completely at fault, because now she's coming from between
23 two vans and trips and you didn't have a chance to see
24 her, right?

25 A. I was trying to figure out why I didn't see
26 her.

Direct-Brooms-Rubinowitz

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2 Q. That's your explanation for why you were
3 doing this, right? Right?

4 A. That's what I wrote sir, yes.

5 Q. I see. So, you were writing this as an
6 explanation for what happened without referencing the
7 truthful things that you knew for certain, that you never
8 saw her, nor where she came from, right?

9 A. Yes.

10 Q. And, in fact, what you're saying is, there
11 were two vans parked somewhere over here on this side
12 (indicating), right?

13 A. Yes.

14 Q. Where were the vans?

15 A. Where you just pointed. Somewhere on the
16 side, the left-hand side of the street.

17 Q. With the Court's permission would you come up
18 here.

19 A. I don't remember exactly where.

20 Q. Come up here, sir.

21 A. Okay.

22 Q. Okay. Show us where the vans were. Point.

23 A. There were two vans parked. I don't know
24 exactly where, but two vans here (indicating).

25 Q. Where was the first one in relation to the
26 crosswalk?

Direct-Brooms-Rubinowitz

- 1
- 2 A. Right here (pointing).
- 3 Q. Where? Right here (pointing)?
- 4 A. Somewhere around here.
- 5 Q. Where was the second?
- 6 A. In front.
- 7 Q. Show us.
- 8 A. Somewhere around there (pointing).
- 9 Q. What did the vans look like?
- 10 A. Construction vans.
- 11 Q. How big were they?
- 12 A. Not sure.
- 13 Q. Bigger than your van?
- 14 A. Yes.
- 15 Q. How much bigger than your van?
- 16 A. Not sure.
- 17 Q. How wide were they?
- 18 A. Not sure.
- 19 Q. Did they really exist?
- 20 A. They did.
- 21 MS. DICOLA: Objection.
- 22 THE COURT: Overruled.
- 23 Q. Did they really exist? Were they really here
- 24 at the time?
- 25 A. They were.
- 26 Q. No doubt about that?

Direct-Brooms-Rubinowitz

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A. No.

Q. You wouldn't just be creating those, would you?

MS. DICOLA: Objection.

THE COURT: Overruled.

A. No.

Q. Can you tell us why you didn't put that down, where the vans were located on the MV-104 that you drew?

A. No.

Q. Okay. You can have your seat, sir. There were no vans on the north side of the street, correct?

A. I don't remember them on that side of the street.

Q. So, what you're saying is, you believe the pedestrian came. She would have walked down here (pointing). Walked up westerly. And then decided to cut across the street this way (pointing), coming northbound in between two vans, right?

A. Yes.

Q. And walking into the street and tripping, right?

A. Yes.

Q. Do you have any idea where Ms. Park was going at the time?

A. I don't.

Direct-Brooms-Rubinowitz

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2 Q. Do you know if she was going to school?

3 MS. DICOLA: Objection. He doesn't know.

4 Q. Do you know if she was going to school?

5 THE COURT: Sustained.

6 Q. Did you ever find out where she was going?

7 A. I heard you say she was going to school.

8 Q. At the time you filled out this report,
9 Exhibit 10-A, you didn't know where she was going, did
10 you?

11 A. I didn't know, no.

12 Q. Did you know what side of her body was
13 injured?

14 A. I didn't.

15 Q. Before you left the scene, did you find out
16 what side of her body was injured?

17 A. I didn't.

18 Q. With respect to the van itself, this gray
19 bumper that I'm pointing to right here, in the front of
20 your van, how big is this gray bumper, top to bottom?

21 A. I don't know, sir.

22 Q. Do you know if it's a foot?

23 A. I don't know.

24 Q. Do you know if it's two feet?

25 A. I don't know, sir.

26 Q. Do you know if it's three feet?

Direct-Brooms-Rubinowitz

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A. You want me to guess?

Q. I want you to give us your best estimate,
sir.

A. From where to where?

Q. Bottom of the bumper to the top of the
bumper.

A. A foot, maybe a foot and a half.

(Continue on the next page.)

1 Brooms-Plaintiff-Direct

2 Q. You've walked by this van many times as far
3 as the front of the van, true?

4 A. Yes.

5 Q. When you walked by the front of the van, have
6 you ever taken a look at where your knee is in relation
7 to the bumper?

8 A. No.

9 Q. Not once, right?

10 A. No.

11 Q. When did you last look at your speedometer
12 before making the turn?

13 A. Can't say.

14 Q. You don't know?

15 A. No.

16 Q. Earlier when you were giving us speeds, you
17 can agree you hadn't looked at the speedometer, right?

18 A. Say that again.

19 Q. When you asked you about 5 miles an hour 10
20 miles an hour, right?

21 A. Right.

22 Q. You weren't looking at the speedometer?

23 A. No.

24 Q. Did your vehicle have a speedometer?

25 A. Yes.

26 Q. It was a dial or was it an actually digital

1 Brooms-Plaintiff-Direct

2 Q. So you tried to piece together what happened
3 with the accident and trying to piece together what
4 happened with the accident what you're doing is you're
5 deliberately not putting down something you know to be
6 absolutely true, correct?

7 A. No.

8 Q. You know it to be true that you never saw her
9 nor where she came from, right?

10 A. Yes.

11 Q. You're trying to piece together in your mind
12 what happened, right?

13 A. Yes.

14 Q. The only thing written in that report is with
15 respect to the third, fourth, and fifth lines, things
16 you never saw, correct?

17 A. Yes.

18 Q. When you look back at this sir, were you
19 being as honest as you could be in filling out this
20 report?

21 A. At the time I thought I was, but no.

22 Q. I'm asking you now when you look back at this
23 were you being honest?

24 Take your time?

25 A. What's the question?

26 Q. Looking back at this sir, you looked at this

1 Brooms-Plaintiff-Direct

2 report many times, right?

3 A. Yes.

4 Q. Before coming here you looked at this report;
5 didn't you?

6 A. Yes.

7 Q. You reviewed testimony times many, many
8 times; am I right?

9 A. Yes.

10 Q. You reviewed it before the deposition, right?

11 A. Can't say if I did. Can't remember if I did.

12 Q. Regardless sir, one of the things you know
13 you are not being as honest as you could have been,
14 true?

15 A. I could have put other words in, yes.

16 Q. My question is you're not being as honest as
17 you could have been, true?

18 MS. DICOLA: Objection.

19 THE COURT: Overruled.

20 Q. You are not being as honest as you could have
21 been, true?

22 A. I could have put that in, yes.

23 Q. True?

24 A. Yes.

25 Q. Did anyone at the Department of
26 Transportation say here is what I want you to do when

1 Brooms-Plaintiff-Direct

2 you fill out a report like this, somebody has been
3 injured, don't write down what you know to be true,
4 write down facts that have no specific reference point
5 for you?

6 A. No.

7 Q. In fact, what they told you to do was to
8 write down what you know to be true, correct?

9 A. Not in those words. It's only fill out the
10 papers. Read the direction and fill out the paperwork.

11 Q. Is it your understanding when they said read
12 the directions and fill out the papers they want you to
13 make things up?

14 A. No.

15 Q. And that's what you did, true?

16 A. Yes.

17 Q. Why did you make things up? Explain it to
18 the jury.

19 A. Well, after the accident it didn't make sense
20 to me. I knew I cleared the crosswalk, so I was trying
21 to figure out where she came from and why I didn't see
22 her and that's why I put it down.

23 Q. Continue.

24 A. That's it.

25 Q. Nothing else. That's the whole explanation?

26 A. Yes.

1 Brooms-Plaintiff-Direct

2 to do, I want to try to piece it back? Did you tell
3 him that?

4 A. Not in those words, no.

5 Q. Did you tell him, by the way, I want you to
6 know what I'm writing right now, I never saw it?

7 A. No, I didn't.

8 Q. That's what you did, didn't you?

9 A. I didn't tell him that.

10 Q. That's what you did, didn't you? You
11 actually write down something you never saw, right?

12 A. Yes.

13 Q. How many times did you speak to Mr. Allen
14 following the time that you wrote this?

15 A. I'm not sure.

16 Q. Well, did you speak with him for more than
17 five minutes when you got back to the shop?

18 A. Yes.

19 Q. And didn't he say to you Richie, what
20 happened?

21 A. Yes.

22 Q. And didn't you tell him I never saw her?

23 A. I told him I wasn't sure.

24 Q. Now, we know that you told Mr. Allen I don't
25 know where she came from. I didn't see her, right?

26 A. Yes.

1 Brooms-Plaintiff-Direct

2 Q. And so he knew this, right?

3 A. Yes.

4 Q. Because you told him loud and clear I never
5 saw her. I don't know where she came from, right?

6 A. Yes.

7 Q. This report has his name on it, right?

8 A. Yes.

9 Q. He signed off on it, right?

10 A. Yes.

11 Q. Did he sign off on it in front of you?

12 A. I don't think so. I can't say.

13 Q. But you know one thing that you've done is
14 you told him that you never saw Ms. Park nor where she
15 came from before you gave him the report, right?

16 A. Yes.

17 Q. So he knew loud and clear I know you never
18 saw this. I know you had no idea where Ms. Park came
19 from, right?

20 A. Yes.

21 Q. Did he say to you Mr. Brooms, Richie, you
22 can't do this; you can't make up facts; you have to put
23 down what you know? Did he say anything like that?

24 MS. DICOLA: Objection.

25 THE COURT: Sustained.

26 Q. Did he say anything to you about don't put

1 Brooms-Plaintiff-Direct

2 down things that you don't know?

3 A. No, he didn't.

4 Q. Did he say to you only put down the truth?

5 A. He didn't say nothing, no.

6 Q. So we know with certainty that's Dave Allen's
7 signature, right?

8 A. Yes.

9 Q. Your supervisor, right?

10 A. Yes.

11 Q. This report gets submitted to the Department
12 of Transportation, right?

13 A. Yes.

14 Q. No correction is ever made to it, right?

15 A. No.

16 Q. Why not?

17 A. Most papers are submitted. That was it.

18 Q. But you knew there was a mistake in there,
19 right?

20 MS. DICOLA: Objection.

21 THE COURT: Sustained.

22 Q. Why didn't you amend it?

23 A. I thought I tried to piece together what
24 would make sense to me, that's why.

25 Q. Why didn't you amend that report?

26 A. I don't know.

1 Brooms-Plaintiff-Direct

2 Q. There is no question you were driving the van
3 with the permission and consent of the city, true?

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. And this photograph it's true that you can't
8 pinpoint where it was that you actually heard the
9 thump, correct?

10 A. Correct.

11 Q. And when I say this photograph, it's the one
12 that's labeled Defendant's Exhibit A. It's in evidence
13 and it's the one I have written West 31st Street on,
14 correct?

15 A. Correct.

16 Q. Isn't it true that you glanced in your
17 mirrors when you passed the crosswalk, sir?

18 A. Yes.

19 Q. When did you start to turn and look in the
20 mirrors?

21 A. Once I completed my turn.

22 Q. Are you sure of that or are you guessing?

23 A. Once I completed my turn.

24 Q. In other words, you know for a fact that's
25 exactly what happened? You're not guessing about that
26 at all?

1 Brooms-Plaintiff-Direct

2 A. I looked in my mirrors when I completed the
3 turn, yes.

4 Q. As we know as you are making a turn a left
5 turn, would you be looking straight ahead, to your
6 left, to your right, or somewhere else as you were
7 making the turn?

8 A. As I was making the turn I was looking
9 straight ahead.

10 Q. If you were looking straight ahead and you
11 were at an angle you would be looking this way,
12 correct?

13 A. No.

14 Q. You're looking straight ahead. Your van is
15 facing that way. Wouldn't you be looking straight
16 ahead?

17 A. As I'm making the turn.

18 Q. As you're making the turn do you know exactly
19 where you were looking?

20 A. No, I don't.

21 Q. Thank you. You can't say where the rear
22 lights of your van were when you came to a stop, true?

23 A. Say it again.

24 Q. You can't say where the rear lights of your
25 van were when you came to a stop, true?

26 A. True.

1 Brooms-Plaintiff-Direct

2 Q. After getting out of the van you didn't look
3 to see where the back of the van was, right?

4 A. I didn't.

5 Q. You didn't go behind and look, right?

6 A. To see where I was where the van was, no.

7 Q. You didn't go behind for assistance. We've
8 already covered that, right?

9 A. No, I didn't.

10 Q. In fact, you can't say where Ms. Park was
11 located after the accident, true?

12 MS. DICOLA: Objection. Just in
13 relation to what?

14 THE COURT: Sustained.

15 Q. You can't say where she was located in
16 relation to your van after the accident?

17 A. She's behind my van.

18 Q. You can't say where she was specifically; can
19 you?

20 A. No.

21 Q. And you don't know where she was at the point
22 of impact because you never saw her, correct?

23 A. Correct.

24 MS. DICOLA: Asked and answered.

25 THE COURT: Sustained.

26 Q. You never honked your horn before impact,

1 Brooms-Plaintiff-Direct

2 correct?

3 A. No.

4 Q. That's correct, isn't it?

5 A. That's correct.

6 Q. You didn't fill out any reports other than
7 the ones we spoken about today, these three reports
8 correct? These three documents, correct?

9 A. Correct.

10 Q. Which way was Ms. Park's head facing when you
11 saw her after the accident?

12 A. Can't say. Can't say. Not sure.

13 Q. Which way were her feet pointing?

14 A. Not sure.

15 Q. Where was her body, describe it?

16 A. She was laying on the ground.

17 Q. Which side was up? Which side was down?

18 A. I don't recall.

19 Q. Isn't it true that she was east of your van
20 closer to 6th Avenue.

21 A. Behind my van. Yes, she was behind the van,
22 yes.

23 Q. Closer to 6th Avenue?

24 A. Closer to 6th Avenue then what?

25 Q. Isn't it true that after you got out of the
26 van she was east of your van closer to 6th Avenue?

1 Brooms-Plaintiff-Direct

2 A. Closer than the van?

3 Q. Closer to 6th Avenue than she was to your
4 van?

5 A. Yes, yes.

6 Q. How much feet east was she?

7 A. I don't know.

8 Q. Isn't it true sir that the accident that took
9 place occurred at the intersection of 6th Avenue and
10 31st Street?

11 A. No.

12 Q. You're sure of that?

13 A. Yes.

14 Q. In this very report that you filled out on
15 the day of the accident, you had an opportunity to
16 write the location of the accident; didn't you?

17 A. I did.

18 Q. And what you wrote was accident's location
19 6th Avenue at 31st Street. That's your handwriting,
20 correct?

21 A. Yes.

22 Q. And you wrote that this accident took place
23 at 6th Avenue and 31st Street, correct?

24 A. Yes.

25 Q. And now you're changing it; aren't you?

26 MS. DICOLA: Objection.

1 Brooms-Plaintiff-Direct

2 A. No.

3 THE COURT: Overruled.

4 Q. Now you're changing it now?

5 A. No.

6 Q. You're not trying to change it?

7 A. No, Sir.

8 Q. When you wrote 6th Avenue and 31st Street
9 were you trying to be honest when you wrote this report
10 at this part of the report?

11 A. I put accident 31st Street on the report.

12 Q. 6th Avenue and 31st Street is it right here
13 on the intersection?

14 A. It's four intersections, sir.

15 Q. Excuse me.

16 A. There is four intersections.

17 Q. You had an opportunity to write down anything
18 you wanted. Nobody was stopping you, correct?

19 A. Yes.

20 Q. Nobody was telling you what to write and what
21 not to write, correct?

22 A. Correct.

23 Q. These are choices you made on your own,
24 correct?

25 A. Correct.

26 Q. Conscious decisions by you, true?

1 Brooms-Plaintiff-Direct

2 A. Yes.

3 Q. When you wrote 6th Avenue and 31st Street
4 were you trying to be honest at that time?

5 A. Always.

6 Q. Are you trying to change the location of the
7 accident now?

8 A. No, I'm not.

9 MS. DICOLA: Objection.

10 THE COURT: Overruled.

11 Q. Are you trying to change the location of the
12 accident now, sir?

13 A. No, I'm not.

14 Q. Did you meet with anyone else from the
15 Department of Transportation to discuss how the
16 accident occurred?

17 A. No.

18 Q. Did anyone ever call you in and say is there
19 anything else you want to tell us about this?

20 A. No.

21 Q. Did you ever tell anyone at the Department of
22 Transportation at the Maspeth shop other than Mr. Allen
23 I never saw where she came from and I never saw her?

24 A. Not that I could remember, no.

25 Q. Did Mr. Allen ever say to you Mr. Brooms you
26 ought to put that down in the report?

1 Brooms-Plaintiff-Direct

2 MS. DICOLA: Objection.

3 THE COURT: Sustained.

4 Q. Did he ever tell you to make corrections?

5 MS. DICOLA: Objection. We covered all
6 of this.

7 Q. I'm asking about ever, not talking about the
8 day of the accident or three months later, I'm talking
9 about ever?

10 A. Not that I could remember, no.

11 Q. When was the last time you spoke with him
12 about the accident?

13 A. Sometime around this time.

14 Q. Sometime around the day of the accident,
15 right?

16 A. Sometime around this time, yes.

17 Q. Around February 15th, 2013, right?

18 A. Yes.

19 Q. Never spoke with him after that, right?

20 A. About the accident, no.

21 Q. Not a word, right?

22 A. No.

23 Q. Ever learn how much your van weighed?

24 MS. DICOLA: Objection.

25 Q. Did you ever learn? I'm asking if you ever
26 learned?

1 Brooms-Plaintiff-Direct

2 A. No, Sir.

3 THE COURT: Objection is overruled.

4 Q. If I may just have one moment, your Honor.

5 MR. RUBINOWITZ: Thank you your Honor.

6 No further questions.

7 THE COURT: Ms. Dicola, do you need a
8 short break?

9 MS. DICOLA: Just a few minutes, your
10 Honor.

11 THE COURT: That will give you a short
12 opportunity to use the bathroom. I'll see you
13 back in a few minutes.

14 COURT OFFICER: All rise. Jury exiting.

15 (Whereupon a brief recess is taken)

16 (Continued on the next page)

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1 Cross-Brooms-Dicola

2 THE COURT: Are you ready?

3 MS. DICOLA: Ready, your Honor.

4 CROSS EXAMINATION

5 BY MS. DICOLA:

6 Q. Good afternoon, Mr. Brooms.

7 A. Good afternoon.

8 Q. How are you doing?

9 A. All right.

10 Q. I would like to start by you introducing
11 yourself to the jury. Please tell them a little bit about
12 who you are, where you're from and what you do.13 A. My name is Richard Brooms. I'm from
14 Brooklyn, New York. And I work for the Department of
15 Transportation.16 Q. Friends call you Richard or they call you
17 Richie?

18 A. Richie.

19 Q. Just in case you forget, what's captured on
20 your right hand?

21 A. Rich.

22 Q. Okay. In addition to -- For how long have
23 you been working for the Department of Transportation?

24 A. 2007.

25 Q. Prior to joining DOT, what kind of work did
26 you do?

Cross-Brooms-Dicola

- 1
- 2 A. Security guard.
- 3 Q. Where did you go to high school?
- 4 A. Brooklyn.
- 5 Q. After high school what did you do?
- 6 A. Navy.
- 7 Q. Why was that, sir?
- 8 A. Good opportunities.
- 9 Q. All right. When you joined the navy, where
10 were you sent to?
- 11 A. Norfolk, Virginia.
- 12 Q. What did you do in Norfolk?
- 13 A. I was a machinist there.
- 14 Q. What does that mean?
- 15 A. I worked on engines.
- 16 Q. All right. When you moved down to Virginia,
17 did you obtain a driver's license?
- 18 A. Yes.
- 19 Q. Had you had a New York State driver's license
20 before then?
- 21 A. No.
- 22 Q. Okay. Why did you obtain a driver's license
23 in Virginia?
- 24 A. Needed a license to get around.
- 25 Q. Little different down there, right?
- 26 A. Yes.

Cross-Brooms-Dicola

1
2 Q. While serving in the navy, were you deployed
3 anywhere?

4 A. Yes.

5 Q. For how long and where were you deployed to?

6 A. Iraq, Kuwait, six months.

7 Q. Did there come a time when you came back to
8 the states?

9 A. Yes.

10 Q. And after finishing your -- Withdrawn. How
11 long was your service in the navy, active service?

12 A. Four years active.

13 Q. After being in active service, how long were
14 you part of the reserves or were you done completely?

15 A. Reserves, four years.

16 Q. And during your four years in reserves, where
17 did you live?

18 A. Brooklyn.

19 Q. Okay. And during that time did you work
20 anywhere?

21 A. I was going to school.

22 Q. All right. What were you studying?

23 A. Mechanics.

24 Q. Did you finish your schooling?

25 A. Yes.

26 Q. Okay. And did there come a point in time

Cross-Brooms-Dicola

1
2 that you got employed at JFK?

3 A. Yes.

4 Q. The airport that is.

5 A. Yes.

6 Q. And how long -- What was your employment and
7 how long was it for?

8 A. Security guard, for about a year.

9 Q. All right. During your opportunity there,
10 were you required at all to drive a vehicle?

11 A. Yes.

12 Q. How did you get to and from the airport?

13 A. With the vehicle.

14 Q. All right. And after working at JFK, is that
15 when you first started working for the Department of
16 Transportation?

17 A. Yes.

18 Q. And what was your initial position with the
19 Department of Transportation or DOT, if you don't mind?

20 A. Traffic device maintainer.

21 Q. And as you explained earlier, that included
22 repairing and replacing traffic signs?

23 A. Yes.

24 Q. Did that require you to go to all five
25 boroughs or only one particular borough, something else?

26 A. All five boroughs.

Cross-Brooms-Dicola

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2 Q. As a traffic device maintainer, were you
3 assigned a particular vehicle or work with a group,
4 something else?

5 A. As a TDM, we had different vehicles.

6 Q. And were they vans? Were they cars?
7 Generally something else?

8 A. Something else.

9 Q. And what were they?

10 A. Utility trucks.

11 Q. How would you describe a utility truck?

12 A. Like a work truck. Like a van.

13 Q. Did you need a particular kind of license in
14 order to drive that type of vehicle?

15 A. Yes.

16 Q. What is that, sir?

17 A. CDL.

18 Q. What does that stand for?

19 A. Commercial driver's license.

20 Q. Did you obtain a commercial driver's license
21 when you joined the DOT?

22 A. Yes.

23 Q. Do you still have that license?

24 A. Yes.

25 Q. When you were promoted to supervisor, how did
26 your duties change from a TDM to supervisor?

Cross-Brooms-Dicola

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A. It went from installer to supervisor.

Q. As a TDM, if you don't mind me using that expression, a traffic device maintainer, what kind of reports or paperwork did you prepare on a regular basis?

A. As a TDM?

Q. Yes, sir.

A. It was basically paperwork on the jobs you did for the day locations. If you had to install rails, different signs, removed to replace.

Q. And would you prepare them exclusively or would members of your group that you were working with prepare them as well, something else?

A. Yeah. It's usually two guys on a crew and one of the two guys does the paperwork for the day.

Q. And when you were promoted to supervisor, did you also have to complete paperwork?

A. Yes.

Q. And what type of paperwork would you complete on a regular basis?

A. Paperwork on the jobs that I did.

Q. Prior to the paperwork that you prepared in this case, the document that's in evidence as Plaintiff's Exhibit 8, your driver's accident report, had you ever prepared a report such as this prior to February 15, 2013?

A. No.

Cross-Brooms-Dicola

1
2 Q. Have you ever prepared an MV-104, such as the
3 one that's marked as Plaintiff's 9-A, excuse me, 9-C and
4 9-A? Had you ever prepared records such as these before?

5 A. No.

6 Q. Were you given any type of instruction
7 regarding how to prepare the reports?

8 A. No.

9 Q. Have you ever prepared any reports such as
10 that, any of the three since the date of this accident?

11 A. No.

12 MR. RUBINOWITZ: Judge, may we approach on
13 this?

14 THE COURT: Sure.

15 MR. RUBINOWITZ: I can take care of it
16 quickly, if you want us to approach over here, on the
17 side.

18 THE COURT: Yes. Let's go in there.

19 (Whereupon a side bar conference was held.)

20 THE COURT: Okay.

21 Q. Mr. Brooms, this is looking, and feel free to
22 step down, at Plaintiff's Exhibit 13 in evidence, as you
23 were driving north?

24 THE COURT: Did you ask him to step down?

25 Q. I said feel free to step down if you need to.
26 I don't know if it's the angle as such that you can see.

1 Cross-Brooms-Dicola

2 A. I can see.

3 Q. Very well. Thank you. As you were driving
4 north on Sixth Avenue, what lane of traffic were you in?

5 A. The most left lane.

6 Q. And to the left of you, was it a parking
7 lane, a bicycle lane, something else?

8 A. To the left of me was a bicycle lane.

9 Q. How many lanes of traffic were there to your
10 right of moving traffic?

11 A. Besides my lane?

12 Q. Correct.

13 A. Three lanes. Three other lanes.

14 Q. And when you first noticed the traffic light,
15 what color was it?

16 A. Green.

17 Q. When you last noticed the traffic light, what
18 color was it?

19 A. Green.

20 Q. Can you explain to the ladies and gentlemen
21 of the jury why, when you saw the traffic light, you
22 didn't look around you to see specifically where on the
23 block you were between 30th and 31st Street on Sixth
24 Avenue when you first saw the green light?

25 A. Repeat the question.

26 Q. Sure. As you were driving north --

1 Cross-Brooms-Dicola

2 A. Correct.

3 Q. -- on Sixth Avenue and you first noticed the
4 green light, why didn't you look around and say, this is
5 exactly (gesturing) where I am when I noticed the green
6 light?

7 A. The green light. I was driving.

8 Q. As you were driving, what, if anything, were
9 you looking at?

10 A. I was looking at the road ahead.

11 Q. And what did you observe on the road ahead?

12 A. The pedestrians walking, traffic flow.

13 Q. And when you say "pedestrians walking", where
14 were they walking?

15 A. Street, on the sidewalk.

16 Q. Everywhere?

17 A. Everywhere, yes.

18 Q. Counsel asked you this morning regarding
19 scanning as you were looking. Do you recall being asked
20 questions about being able to scan where you were looking?

21 A. I don't recall.

22 Q. Okay. As you drove, did you look straight
23 ahead? Did you look other places? Something else?

24 A. I was looking straight ahead.

25 Q. Okay. As you were looking straight ahead,
26 what, if anything, were you able to see as you looked

Cross-Brooms-Dicola

1
2 straight ahead?

3 A. Traffic flowing, cars going, people walking.

4 Q. Did there come a point in time that you
5 crossed over the crosswalk of Sixth Avenue?

6 A. Yes.

7 Q. When you crossed over the crosswalk, what did
8 you do with respect to the movement of your vehicle?

9 A. I stopped.

10 Q. And where specifically did you stop?

11 A. In front of the crosswalk on 31st Street.

12 Q. I'm showing you what is in evidence as
13 Plaintiff's Exhibit 6. Do you recognize this photograph,
14 sir?

15 A. (Examining). Yes.

16 Q. And the date, it's dated July 29th, 2014. Is
17 that the date of your deposition, sir?

18 A. I don't remember the date.

19 Q. Okay.

20 MR. RUBINOWITZ: I'll stipulate.

21 MS. DICOLA: Thank you, counsel.

22 Q. We agreed that was the date you were deposed,
23 okay. With regard to these markings, of which there are
24 three, an X with a circle, an LT and a CW, who made those
25 markings, sir?

26 A. I don't recall.

Cross-Brooms-Dicola

1
2 Q. Okay. Do you recall if it was you or if it
3 was a lawyer, somebody else?

4 A. I can't remember.

5 Q. All right. Do you know what LT stands for?

6 A. I don't.

7 Q. Do you know what CW stands for?

8 A. Crosswalk.

9 Q. Do you know what TW stands for?

10 A. No.

11 Q. Do you recall, sir, being asked to draw on
12 this photograph during your deposition?

13 A. Can't remember.

14 Q. Okay. Can you show the jury where your
15 vehicle, the front of your vehicle, came to a stop in
16 relation to the entire square of the intersection. Please
17 feel free to step down.

18 A. Front of my vehicle was before the crosswalk.
19 Somewhere over here (pointing).

20 Q. Okay. Now, can you indicate to the jury at
21 what angle your van was at when it came to that stop.

22 A. It was slanted on an angle (indicating).

23 Q. Straight down is 90 degrees.

24 A. Correct.

25 Q. Half way would be 45. Can you gauge what
26 angle it was at between 45 and 90 or 45 and zero,

Cross-Brooms-Dicola

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2 something else?

3 A. Between 45 and 90.

4 Q. Okay. And why was it at that particular
5 angle, sir?

6 A. 'Cause I was going to make a left turn, and
7 then I got closer to the crosswalk, some traffic, people
8 walking. So, I stopped there.

9 Q. And prior to stopping, did you notice what
10 the color of the light was?

11 A. Prior to stopping, yes.

12 Q. What was the color?

13 A. It was green.

14 Q. While you were stopped, were you able to see
15 the light?

16 A. No.

17 Q. Why not?

18 A. 'Cause I was there, and the light was to my
19 right.

20 Q. As you were stopped at that angle, what were
21 you able to see with regard to when you looked through
22 your front windshield?

23 A. Pedestrians walking.

24 Q. Okay. Could you see, in terms of the
25 distance, let's show Defendant's Exhibit A. Looking at
26 this photograph, is that -- Well, the vantage point of

Cross-Brooms-Dicola

1
2 that angle, is that similar or different to the angle in
3 which your vehicle was stopped at?

4 A. Closer. Similar.

5 Q. Was it exact?

6 A. No.

7 Q. Okay. Did you take any pictures that day?

8 A. No.

9 Q. Did you have a dash cam on your van?

10 A. No.

11 Q. Did you take your phone out and start taking
12 pictures after this incident?

13 A. No.

14 Q. Why not?

15 A. I was on the phone with 911.

16 Q. When you were stopped just before the
17 crosswalk, for what purpose were you stopped?

18 A. Pedestrians were walking.

19 Q. And was there a point in time when you
20 proceeded to go through the crosswalk?

21 A. Yes.

22 Q. And what caused you to go forward, take your
23 foot off the brake and go forward?

24 A. Crosswalk was clear.

25 Q. How did you know it was clear, sir?

26 A. 'Cause I was looking at the crosswalk.

Cross-Brooms-Dicola

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Q. How were you looking at the crosswalk?

A. Seeing who was walking back and forth.

Q. With regard to the southern curb of 31st Street, were there any vehicles parked there?

A. Yes.

Q. Was there construction going on behind the blue barriers?

A. Yes.

Q. Did you have an understanding, a general understanding as to what the purpose of those vehicles were based upon what they looked like to you?

A. Yeah. Yes.

Q. What did you think they were about or what they were for?

A. I thought they were related to the construction work.

Q. Being from New York, would it be in any way unusual to see, in your opinion, to see construction vehicle or vehicles in front of a construction site?

A. No.

Q. Is that something you've encountered on a regular basis, if not a daily basis?

A. Yes.

Q. With regard to the vehicles on the right, the northern portion, were there also vehicles parked there?

1 Cross-Brooms-Dicola

2 A. I can't recall.

3 Q. Why can't you recall, sir?

4 A. 'Cause I was looking on this side.

5 Q. When you say this side?

6 A. I was looking on this side of the street
7 (pointing).

8 Q. Why on the left side of the street?

9 A. Making my turn to get to the middle, I know
10 there was traffic there, so I couldn't -- I couldn't cut
11 it close.12 Q. When you say cut it close, sir, showing you
13 what's in evidence as Plaintiff's Exhibit 7, I would like
14 you to assume, sir, that these markings were made by
15 Ms. Park under oath at her deposition on July 22nd, 2014.
16 Okay, sir?

17 A. Okay.

18 Q. I would like you to assume that the X is
19 where she swore the point of impact happened, okay, sir?

20 A. Okay.

21 Q. First of all, in relation from the northern
22 side to the southern side, would you agree or disagree
23 that the point of impact is three quarters of the way
24 across the crosswalk?

25 A. Disagree.

26 Q. And if you had to explain where that X is,

Cross-Brooms-Dicola

1
2 sir, in relation to the curb, where would you say it is?

3 A. It's like the middle of the curb.

4 Q. Knowing what you knew -- And you can look at
5 Defendant's B. Let me do it this way. The angle of which
6 you were driving at or the viewpoint driving north,
7 driving north up Sixth Avenue, and knowing as you
8 indicated -- Withdrawn.

9 Were you able to see before making your left
10 turn whether or not there were cars parked on the
11 southern -- on the southern portion of 31st Street?

12 A. Before making the left turn?

13 Q. Correct.

14 A. Before I completed or before I started?

15 Q. Before you started.

16 A. No.

17 Q. Before you completed it, were you able to?

18 A. Yes.

19 Q. And why did you move your van up to
20 essentially the middle of the intersection as you
21 indicated before making your left turn? Withdrawn.
22 Completing your left turn.

23 A. What's the question?

24 Q. Sure. You indicated you had moved your van
25 up --

26 A. Correct.

Cross-Brooms-Dicola

1
2 Q. -- to the middle of the intersection before
3 finishing your left turn?

4 A. Correct.

5 Q. Why did you move to the middle of the
6 intersection?

7 A. So I could see.

8 Q. Sir, you indicated on direct that this was
9 your regular van, correct?

10 A. Yes.

11 Q. Were you familiar with how it operated?

12 A. Yes.

13 Q. What it took to get it to go and what it took
14 to get it to stop essentially?

15 A. Yes.

16 Q. Okay. Knowing what you know about how the
17 van operated, would you agree or disagree that it would be
18 possible for you to make the left turn and have an impact
19 a few feet from the curb, as was indicated by plaintiff
20 under oath?

21 A. No.

22 Q. Why not, sir?

23 A. I would hit those parked vehicles.

24 Q. And where -- You indicated a few moments ago
25 that you don't know specifically where those parked
26 vehicles were, correct?

Cross-Brooms-Dicola

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A. Correct.

Q. Do you know which side of the street they were on?

A. I do.

Q. Which side of the street were they on?

A. (Pointing).

Q. For the record, on the southern side of the street?

A. Yes.

Q. Do you know if they were west of the crosswalk or in the crosswalk?

A. West.

Q. Okay. Do you know if they were generally in the vicinity of where it says no standing?

A. Yes.

Q. Okay. Can you explain to the jury why, after this accident, you didn't get out and mark (gesturing) how many feet between the back of these vehicles to the crosswalk it was?

MR. RUBINOWITZ: Judge, do we have to have the --

MS. DICOLA: He questioned him on why --

MR. RUBINOWITZ: I'm just objecting to her movement. That's it. I don't mind the questions.

MS. DICOLA: Let the record reflect I was

1 Cross-Brooms-Dicola

2 marking it out with my feet.

3 MR. RUBINOWITZ: No need for that.

4 THE COURT: The jury is to disregard
5 counsel's theatrics.

6 Q. You can take your seat back, Mr. Broom.

7 MR. RUBINOWITZ: Thank you judge.

8 Q. Did you pace out how far the rear of the
9 first car closest to the crosswalk was from the crosswalk?

10 A. I didn't.

11 Q. Did you pace out the width of that car?

12 A. No, I didn't.

13 Q. Did you pace out where the back of your van
14 was from the westerly line of the crosswalk?

15 A. No, I didn't.

16 Q. Your van carries tools, correct, sir?

17 A. Yes.

18 Q. Did it have a tape measure?

19 A. Yes.

20 Q. Did you at any point in time take a tape
21 measure out, lie it down on the street and measure how far
22 the rear of your van was from the western part of the
23 crosswalk?

24 A. No, I didn't.

25 Q. Did you measure the back of the closest
26 vehicle parked to -- sorry -- the vehicle parked closest

1 Cross-Brooms-Dicola

2 to the westerly crosswalk was from the crosswalk?

3 A. No, I didn't.

4 Q. Did you go up to Ms. Park and pace out how
5 far she was from the rear of your van?

6 A. No, I didn't.

7 Q. Did you lay a tape measure by her legs that
8 were bleeding, by her foot that was contorted?

9 MR. RUBINOWITZ: Objection. Objection to the
10 comments now, judge.

11 THE COURT: Sustained.

12 Q. Did you lay a tape measure next to her body
13 and pace out, measure or pace out how far she was from the
14 crosswalk?

15 A. No, I didn't.

16 Q. Or how far she was from your van?

17 A. No.

18 Q. Why not?

19 A. I was on the phone. She was hurt. I was on
20 the phone to 911.

21 Q. You were asked multiple questions on whether
22 or not you went up to Ms. Park after this accident. Do
23 you recall that?

24 A. Yes.

25 Q. Were you in any position, in your opinion, to
26 render her medical aid?

Cross-Brooms-Dicola

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A. No.

Q. What was the only thing you could do for her?

A. Call for help.

Q. And did you do that, sir?

A. Yes.

Q. When you called 911, did you call before or after you called central?

A. Before.

Q. Why did you call 911 before you called your office?

A. To get help.

Q. And did you remain on the scene? Were you still on the scene when an ambulance was called?

A. Yes.

Q. Excuse me. Arrived?

A. Yes.

Q. And did you have an understanding that when you called 911, police would also likely show up?

A. Yes.

Q. Did you remain on the scene when the police were there?

A. Yes.

Q. And did you, in fact, give a statement to the police officer that you did not see her and you did not know where she came from?

Cross-Brooms-Dicola

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A. Yes.

Q. With regard to the reports that you prepared, sir, of which there were three, correct?

A. Yes.

Q. Do you have an understanding as to where those three reports internally go within the Department of Transportation?

A. Yes.

Q. And where do they go, sir?

A. It goes to records at Harbor Street.

Q. When you say "it goes to records", for what purpose does it go there?

A. Keep it on file.

Q. And do you have any understanding as to whether or not those records are reviewed at any point in time?

A. I don't know.

Q. In addition to those three records, your statement and the two MV-104s you prepared, was there any other paperwork that you understood would also either be forwarded with those reports or eventually filed with those reports?

A. Supervisor makes a report.

Q. Okay. And with regard to -- That would be David Allen or Dave Allen in this instance?

Cross-Brooms-Dicola

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A. Yes. Yes.

Q. With regard to the police accident report and the statement you made at the scene, do you have any understanding whether or not the Department of Transportation would have received that report?

A. Yes.

Q. And what is your understanding as to whether or not they would have received it?

A. A copy would be with the rest of the paperwork.

Q. So, when you say "the rest of the paperwork", if somebody was to pull the file on this case, there would be the report that you prepared, the operator's statement, correct?

A. Yes.

Q. The first MV-104 you filled out, correct?

A. Yes.

Q. The second MV-104?

A. Yes.

Q. The supervisor's report?

A. Yes.

Q. And the police accident report?

A. Yes.

Q. All five pieces of paper would be there?

A. Yes.

Cross-Brooms-Dicola

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2 Q. And do you know specifically when the police
3 accident report became part of the file regarding this
4 accident?

5 A. No.

6 Q. To the extent between the date of this
7 accident and today, are you aware of anyone, other than
8 putting aside the litigation of this matter, anyone
9 pulling these reports and asking you further questions
10 internally from DOT about it?

11 A. No.

12 Q. With regard to your operator's statement --
13 Withdrawn. At the scene of this accident, could you
14 describe the moments after the accident and what was
15 happening generally from the moment you stopped your van
16 up until the moment you left the scene.

17 A. Some people passing by Ms. -- Ms. Parks. I
18 was on the phone talking to the police patrol. And then
19 the ambulance came shortly after and started attending to
20 Ms. Parks. And the police arrived. And they came. They
21 were asking me questions.

22 Q. Did the ambulance leave before Ms. --
23 Withdrawn. Did the ambulance leave before the police
24 arrived or were they contemporaneous or something else?

25 A. No. They were both there at the same time.

26 Q. Approximately how long were you on the scene

Cross-Brooms-Dicola

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2 after the accident happened?

3 A. Roughly 40 minutes, 45 minutes.

4 Q. During that time, what, if anything, were you
5 doing besides what you've already indicated?

6 A. Like I said, I gave the police my ID card, I
7 mean, my driver's license and I was there waiting by the
8 scene.

9 Q. Did there come a point in time when the
10 police officer -- Or withdrawn. What transpired that sort
11 of allowed you if you will to leave the scene?

12 A. After he gave me back my -- my driver's
13 license and the registration he gave back to me, he told
14 me I was free to go.

15 Q. And after he told you you could return or
16 leave the scene, where did you go?

17 A. I went back to the shop.

18 Q. During the approximately 40 minutes you were
19 on the scene while Ms. Park was being attended to, for a
20 portion of that and the police were also on the scene, did
21 you take any measurements of any aspect of the crosswalk?

22 A. No.

23 Q. Any aspect of the placement of your vehicle?

24 A. No.

25 Q. Any measurements of where Ms. Park was?

26 A. No.

Cross-Brooms-Dicola

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2 Q. Any measurements with -- Any statements or
3 names of any witnesses who may have been there in the
4 crosswalk at the time of the accident?

5 A. No.

6 Q. Did you take any photographs?

7 A. No.

8 Q. Did you -- Why not?

9 A. I was shook up. I had an accident.

10 Q. When you say you were "shook up", what do you
11 mean?

12 A. I was involved in an accident. A woman was
13 hurt.

14 Q. Did you realize she was hurt?

15 A. I did.

16 Q. Would you have called 911 if -- Did you call
17 911 because you knew she was hurt or on the off chance
18 that she wasn't hurt?

19 A. I know she was hurt, so I called 911.

20 Q. You indicated -- Withdrawn. After you
21 stopped east of the crosswalk, okay, how -- at the moment
22 that you felt a thump, what position was your van in? Was
23 it angled or was it straight?

24 A. Straight.

25 Q. And why was it straight, sir?

26 A. 'Cause I cleared the crosswalk. Finished my

Cross-Brooms-Dicola

1
2 turn.

3 Q. And how do you know as you sit here today
4 that you had cleared the crosswalk?

5 A. I was past one of the vans that were parked.

6 Q. Why don't you know specifically how far you
7 were past the crosswalk?

8 A. I don't.

9 Q. Why don't you know specifically what rate of
10 speed you were going as you made that left turn?

11 A. I just came out of a stop and I was driving.
12 I didn't look at my gauge.

13 Q. Given the dashboard of the van, if you
14 glanced down at the speedometer, what aren't you glancing
15 at?

16 A. The road.

17 Q. And as you were making your turn, which took
18 priority, looking at the road or looking at your
19 speedometer?

20 A. Looking at the road.

21 Q. And why is that, sir?

22 A. 'Cause people, people walk. You know, I
23 don't want to hit nobody.

24 Q. And when you felt the thump, sir, what
25 portion of your van did you feel the thump on?

26 A. The rear of -- the driver's side.

Cross-Brooms-Dicola

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2 Q. When you say "driver's side" rear, just to be
3 perfectly clear --

4 MR. RUBINOWITZ: It's up there.

5 MS. DICOLA: Thank you. We're missing our
6 van picture. Here it is. Sorry, sir. Thank you.

7 Q. You're literally referring to in this
8 photograph, the tire on the right of the photograph,
9 correct?

10 A. Yes.

11 Q. You were asked questions on direct regarding
12 points of impact. Do you recall that?

13 A. Yes.

14 Q. And you never saw where contact was made
15 between the van and Ms. Park, correct?

16 A. Correct.

17 Q. Knowing -- Assume for a moment that Ms. Park
18 was crossing in front of your van from right to left, from
19 the passenger side to the driver's side, okay. Assume
20 that for a moment. Did you feel any impact whatsoever to
21 the front right tire?

22 A. No.

23 Q. At any point in time did you see anything
24 moving from an upright position on your passenger side to
25 the front of your van, across the front fender at any
26 point in time?

Cross-Brooms-Dicola

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A. No.

Q. At any point in time did you feel an impact on the front driver's side?

A. No.

Q. At any point in time did you see anything make contact with the front of your bumper and either fall back to the passenger side or fall forward towards the curb?

A. No.

Q. Your operator's statement indicates that you -- indicates that Ms. Park came between parked vans, correct?

A. Yes.

Q. The parked vans you are referring to were the ones on the south side of the street, correct?

A. Correct.

Q. And if somebody was walking behind your van from south to north, as you had completed your turn, they would be behind the van, correct?

A. Correct.

Q. And if they were walking from south to north, their left side would be at the rear of the van, correct?

A. Correct.

(Continue on the next page.)

1 Brooms-Plaintiff-Cross

2 Q. You don't know when the impact happened, what
3 if any direction Ms. Park fell, correct?

4 A. No, I don't.

5 Q. You don't know what if any direction her body
6 turned, correct?

7 A. Correct.

8 Q. What you do know is where you felt the impact
9 was on the van, correct?

10 A. Correct.

11 Q. You were asked -- you were here during
12 opening statements, correct?

13 A. Yes.

14 Q. And by the way, I made a mistake regarding
15 your rear view mirror, correct?

16 A. Correct.

17 Q. That was my mistake, correct?

18 A. Correct.

19 Q. There is no rear view mirror?

20 A. They have them but --

21 Q. But it's blocked in the back. You can't see
22 them?

23 A. Correct.

24 Q. With regard to visibility on the van, why did
25 you also in addition to looking through the front
26 windshield and the side windows also rely on looking at

1 Brooms-Plaintiff-Cross

2 your side view mirrors?

3 A. Because I didn't have use of the review
4 mirror.

5 Q. With regard to the way the van moves, would
6 you agree or disagree that when the van moves and turns
7 it moves in a block?

8 In other words, the front tires are directly
9 parallel with the back tires as it moves, correct?

10 MR. RUBINOWITZ: Objection.

11 THE COURT: Sustained.

12 Q. You're familiar with how the truck moves,
13 correct?

14 A. Yes.

15 Q. Knowing that you had a CDL, would you agree
16 with me that you've had the opportunity to drive trucks
17 where there is a cab and a trailer on the back,
18 correct?

19 A. Correct.

20 Q. Would you agree or disagree that driving
21 those type of vehicles when making a turn it moves more
22 like a L than in a continuous motion?

23 MR. RUBINOWITZ: Objection.

24 THE COURT: Sustained.

25 Q. How would you describe how this van moves sir
26 in making a turn?

1 Brooms-Plaintiff-Cross

2 A. I don't understand the question.

3 Q. Sure. When making a turn in this vehicle
4 that you had driven for at least a year and a half on a
5 weekly basis, correct?

6 A. Yes.

7 Q. And every day almost that you worked,
8 correct?

9 A. Yes.

10 Q. When making the turns sir were the rear
11 wheels in line, parallel essentially with the front
12 wheels, or at an angle, or something else?

13 MR. RUBINOWITZ: Objection.

14 THE COURT: Sustained.

15 Q. When making a turn sir --

16 THE COURT: Counsel, you're leading the
17 witness and it is cross examination, but it is
18 your client. Therefore, do what, why, when, open
19 ended questions.

20 Q. How does the van turn, sir?

21 A. The question.

22 Q. How does this van turn compared to a truck
23 that has a cab and a tractor?

24 A. They turn the same way. The cab you have to
25 swing it and it turns.

26 Q. What do you mean the cab you have to swing it

1 Brooms-Plaintiff-Cross

2 out.

3 A. The cab it's different from this one.

4 Q. In what way?

5 A. Let me try to explain it. I'm not sure how
6 to explain it.7 Q. Okay, that's fine. When you felt the thump
8 you indicated that there was a period of time, reaction
9 time -- withdrawn. Time between taking your foot off
10 of the accelerator and placing it on the brake,
11 correct?

12 A. Yes.

13 Q. Is that something that you did immediately?
14 Is that something you waited a few seconds to do,
15 something else?

16 A. Immediately.

17 Q. And when you did it immediately, did you take
18 the opportunity to count how long it took you to take
19 your foot from the accelerator and move it a few inches
20 from the brake?

21 A. No.

22 Q. Why not?

23 A. Just happened automatically.

24 Q. And with regard to the distance you travelled
25 when you automatically moved your foot from the
26 accelerator to the brake, do you know what distance you

1 Brooms-Plaintiff-Cross

2 travelled?

3 A. No.

4 Q. Did you -- were you able during that
5 automatic switch from your foot on the accelerator to
6 your foot on the brake to measure the distance that
7 your wheels moved?

8 A. No.

9 Q. When you came to a stop, where did you look?

10 A. Behind me.

11 Q. Why did you look behind you?

12 A. To see what it was.

13 Q. And why behind you instead of in front of
14 you?

15 A. I didn't feel the impact in front of me.

16 Q. And when you looked behind you, did you look
17 through your mirror, through your window, something
18 else?

19 A. I looked through my mirror.

20 Q. And once you saw Ms. Park on the ground, what
21 did you do first or next I should say?

22 A. I stopped. I got out the van. I looked back
23 and seen her on the floor. At that time people came
24 over to her and I ran back to my van to get my phone
25 and then called for emergency help.

26 Q. And while that was going on, you were looking

1 Brooms-Plaintiff-Cross

2 Q. Okay. The rear of your van. Where generally
3 did it stop. Can you draw even an approximation of
4 where it was?

5 MR. RUBINOWITZ: Let's answer the
6 question first.

7 Q. The answer is yes or no.

8 A. No.

9 Q. How do you know you were behind that van?

10 MR. RUBINOWITZ: He didn't say he was
11 beyond the van. Objection.

12 Q. Withdrawn. Were you -- was the front of your
13 van where you were seated in the driver's seat in
14 relation to the rear of this van that you just marked,
15 where were you seated?

16 A. In front of it.

17 Q. And when you say in front of it, do you have
18 any better way of explaining it in relation to the
19 front of the van, the center of the van, the head of
20 the van, something else?

21 A. Explain.

22 Q. You say you were in front of it. Do you have
23 any recollection by placement or anything with regard
24 to where in relation to the work van that was to your
25 left you were seated?

26 A. No.

1 Brooms-Plaintiff-Cross

2 Q. Okay. When did there come a time when you
3 moved the van from the location before proceeding to
4 work?

5 I could rephrase it. When you brought your
6 van to a stop, did it remain in that position until you
7 moved it ultimately to go to work?

8 A. In the morning time with the accident is
9 there?

10 Q. Yes, with the accident?

11 A. Once I was stopped.

12 Q. After the accident and the van was brought to
13 a stop --

14 A. Okay.

15 Q. -- did you move it at all before ultimately
16 returning to work?

17 A. I can't recall.

18 Q. Okay. You could go ahead and sit down, sir.

19 MR. RUBINOWITZ: Last answer is I can't
20 recall?

21 MS. DICOLA: Yes.

22 Q. While you were at the location did you have
23 the opportunity after the accident to exam the roadway
24 around the accident scene generally?

25 A. I guess I had the opportunity, yes.

26 Q. Did you notice whether or not your van made

1 Brooms-Plaintiff-Cross

2 any skid marks of any kind or any markings on the
3 roadway one way or the other?

4 A. I didn't notice any at all.

5 Q. With regard to your operator's statement you
6 were asked questions regarding whether or not you were
7 creating a perfect defense. Do you recall that, sir?

8 A. Yes.

9 Q. Were you?

10 A. No.

11 Q. Why were you trying in your words to piece
12 together what had happened?

13 A. Because I didn't see where she came from and
14 I was trying to figure out how the accident happened.

15 Q. Why did you think that she came from the area
16 of the parked vans?

17 A. At the time that was the only thing that made
18 sense.

19 Q. And why was that the only thing that made
20 sense?

21 A. I cleared the crosswalk. I was driving up
22 the block and felt an impact.

23 Q. And when you felt the impact, what portion of
24 your van did you feel the impact on?

25 A. My driver's side rear.

26 Q. And what significance was that to you, if

1 Brooms-Plaintiff-Cross

2 any?

3 A. I couldn't figure it out.

4 MR. RUBINOWITZ: Objection.

5 THE COURT: Overruled.

6 Q. You could answer, sir.

7 A. I couldn't figure it out. I couldn't see
8 where she came from. I was trying to figure out how I
9 hit her, what it was.

10 Q. As you approached the intersection going
11 north on 6th Avenue, okay. As you were essentially
12 driving north on this lane, did there come a point in
13 time prior to reaching -- withdrawn. Prior to even
14 crossing through the crosswalk on 6th Avenue that you
15 were able to see pedestrians in the crosswalk of 31st
16 Street?

17 A. Repeat the question.

18 Q. Did there come a point in time when you were
19 driving north on 6th Avenue that you were able to see
20 pedestrians in the crosswalk of 31st Street?

21 A. No.

22 Q. When was the first time in relation to the
23 crosswalk on 6th Avenue that you were able to see
24 pedestrians crossing the street?

25 A. I went to start again through the crosswalk
26 of 6th Avenue.

1 Brooms-Plaintiff-Cross

2 Q. And what was the reason -- at any point in
3 time did you stop while you were in the crosswalk of
4 6th Avenue?

5 A. No.

6 Q. Why not?

7 A. I had the light.

8 Q. And what was the reason you stopped just
9 outside the eastern side of the crosswalk on 31st
10 Street?

11 A. Pedestrians were walking.

12 Q. And as you were driving and making this
13 motion from going up 6th Avenue to putting your van at
14 an angle somewhere between 45 and 90 degrees as you
15 indicated, where were you looking?

16 A. Looking in the crosswalk.

17 Q. Were you looking at one particular area of
18 the crosswalk or looking at the whole thing?

19 A. I was looking at the whole thing.

20 Q. As you were stopped in the crosswalk, were
21 you able to see curb to curb across the expanse of 31st
22 Street or were you limited in any way?

23 A. I could see curb to curb.

24 Q. And at any point in time -- withdrawn. At
25 any point in time did you see any pedestrians crossing
26 in front of you at the moment you took your foot off

1 Brooms-Plaintiff-Cross

2 the brake and put it on the accelerator to proceed
3 through the crosswalk?

4 A. No.

5 Q. Why did you take your foot off the brake and
6 proceed through?

7 A. Because the crosswalk was clear.

8 Q. And when you felt the impact, how do you know
9 that you had already cleared through the crosswalk?

10 A. Because I was by the work truck.

11 Q. And although you don't know -- withdrawn.
12 At your deposition in July of 2014, do you recall being
13 asked a series of questions from about 11:30 to about 4
14 o'clock in the afternoon?

15 A. Yes.

16 Q. At that time when you were questioned
17 regarding all of the reports that you prepared?

18 A. Yes.

19 Q. Have you reviewed that testimony prior to
20 testifying at this trial?

21 A. Yes.

22 Q. During your questioning were you asked any
23 questions --

24 MR. RUBINOWITZ: Objection, Judge.

25 THE COURT: Sustained.

26 Q. Is this trial the first time you've ever told

1 Brooms-Plaintiff-Cross

2 anyone under oath --

3 THE COURT: Sustained.

4 Q. Were you asked questions regarding your
5 operator's statement at your deposition.

6 MR. RUBINOWITZ: Objection, Judge.

7 THE COURT: Sustained.

8 Q. Were you given an opportunity prior to
9 today --

10 MR. RUBINOWITZ: Objection.

11 MS. DICOLA: I didn't finish the
12 question.

13 THE COURT: Could the jury please step
14 out please.

15 COURT OFFICER: All rise. Jury exiting.

16 (Jurors exit)

17 THE COURT: You can't use prior
18 consistent statements from a deposition. Okay.
19 Bring the jury back.

20 (Jurors enter)

21 THE COURT: Please be seated.

22 Q. Mr. Brooms, if you don't mind could you just
23 mark the photograph of a van which tire you felt the
24 impact to please?

25 (Witness complies)

26 Q. Thank you sir. And you could return to your

1 Brooms-Plaintiff-Cross

2 seat. Thank you Mr. Brooms. At your deposition sir --

3 THE COURT: Let the record reflect it's
4 the rear driver's tire.

5 MR. RUBINOWITZ: He put a X on it.

6 Q. At your deposition sir, do you recall being
7 asked where to mark the area that the parked vans were
8 in at your deposition in any photographs? Do you
9 recall doing that, sir?

10 A. I can't recall.

11 MS. DICOLA: Thank you Mr. Brooms. No
12 further questions.

13 THE COURT: Redirect.

14 MR. RUBINOWITZ: Yes.

15 REDIRECT EXAMINATION

16 BY MR. RUBINOWITZ:

17 Q. With your permission, your Honor, can you
18 come down here again.

19 (Witness steps down from the stand)

20 Q. There are certain markings on here. CW
21 stands for crosswalk, correct? Refers to plaintiff's
22 Exhibit 14 time of deposition July 29th. LT left turn.

23 A. Yes.

24 Q. X with a circle that shows the lane that you
25 were in. Does that refresh your recollection as to
26 what you noted at the time of the deposition?

1 Brooms-Plaintiff-Redirect

2 A. Yes.

3 Q. Sir, here this is where you were saying was
4 one of those construction vans or trucks?

5 A. Correct.

6 Q. At the deposition you were asked about them
7 also; weren't you?

8 A. I can't recall.

9 Q. And you wouldn't be trying to move this
10 further up the block, would you?

11 MS. DICOLA: Objection.

12 THE COURT: Overruled.

13 Q. You wouldn't be trying to move the position
14 of those vans further up the block, would you?

15 MS. DICOLA: Objection.

16 THE COURT: Overruled.

17 Q. Would you?

18 A. No, Sir.

19 MR. RUBINOWITZ: Your attorney, Mr.
20 Orcutt actually asked you some questions about
21 that at the deposition that you gave under oath
22 back in July of 2014. Page 142 when you were
23 asked these questions --

24 THE COURT: Wait a second. Come back
25 up.

26 (Whereupon, an off the record discussion

1 Brooms-Plaintiff-Redirect

2 is held at the bench between the court and all
3 counsel)

4 Q. If I may because I'm going to be referring to
5 this.

6 THE COURT: Read and then bring him
7 back.

8 MR. RUBINOWITZ: I'm happy to do that,
9 Judge. Were you asked this question and did you
10 give this answer.

11 "QUESTION: Do you recall how far back
12 the vans were parked on the southern parking lane,
13 the rear van, how far back it went? "

14 "ANSWER: I am not sure."

15 Q. Mr. Orcutt asked would it be fair to say that
16 it was at or about where the grates are in the sidewalk
17 and your answer is?

18 "ANSWER: Yes. That's a safe thing to
19 say. That's what you said at the time, correct?

20 A. Yes.

21 Q. And here you marked it further back?

22 A. It was two vans.

23 Q. So the first van with your permission can you
24 please come back up.

25 THE COURT: Sure.

26 Q. You would say that there was a van right at

1 Brooms-Plaintiff-Redirect

2 about the grates?

3 A. Yes.

4 Q. If I put a V here.

5 MS. DICOLA: Objection.

6 THE COURT: Overruled.

7 Q. That would be one of the vans?

8 A. Correct.

9 Q. And the other van would be back here where
10 you made the mark?

11 A. Yes, in front of it, yes.

12 Q. So we have another van back here that's what
13 you say?

14 A. Yes.

15 Q. And your driver's side was in between the
16 two, correct?

17 A. Yes.

18 Q. So we know that you were in between the two.
19 Show us where.

20 A. Closer to that end.

21 Q. Closer to the end of this one. Point it out.

22 A. Closer to here.

23 Q. Didn't you say it was in between the two?

24 A. This van is here.

25 Q. The back of the van would be further back
26 towards the crosswalk, correct?

1 Brooms-Plaintiff-Redirect

2 A. Yes.

3 Q. Where was the back of the van? Point it out.

4 A. I'm not sure.

5 Q. Show us where the driver's side would be?

6 A. Driver's -- car would be right here.

7 Q. This is you, right?

8 A. This is not to scale so I don't know.

9 Q. This is where you're pointing. This is
10 actually a drawing of the actual intersection.

11 A. Okay.

12 Q. Show us again. Point now right where you
13 were?

14 A. I was somewhere in the middle of these two
15 vans, between this van and this van. I was in the
16 middle.

17 Q. We know you were in the middle?

18 A. I don't know if that's where did you --

19 MS. DICOLA: Your Honor, the witness
20 should do it.

21 MR. RUBINOWITZ: Is that where you were?

22 A. I'm in the middle of this van and this van.
23 I don't know exactly where.

24 THE COURT: Wait, because counsel needs
25 to be able to see what's happening.

26 Q. Point, show us.

1 Brooms-Plaintiff-Redirect

2 A. I don't know where I was exactly. I was
3 about somewhere here.

4 Q. Keep your finger right here. I'm just going
5 to put a little star right here. That's where you
6 were.

7 Where was the back of your van behind this?

8 A. I don't know.

9 Q. Wouldn't you agree with me if the driver's
10 seat it over here, the back of the van is behind it?

11 A. I can't say that.

12 Q. You can't say if the back of the van is
13 behind the driver's seat?

14 A. Behind the driver's seat, my driver's seat,
15 yes.

16 Q. What I'm asking you is we know the back of
17 the van is somewhere back here, correct?

18 A. Behind here, yes.

19 Q. Where would you say the back is? Point it
20 out.

21 A. I can't do it.

22 Q. Approximation. You were able to do it when
23 counsel asked you.

24 MS. DICOLA: I didn't ask that
25 questioned.

26 THE COURT: Sustained no commentary.

1 Brooms-Plaintiff-Redirect

2 Q. Show us where it was?

3 A. Here.

4 Q. Point it out and keep your finger right
5 there.

6 MS. DICOLA: Objection.

7 Q. This is the back of the van, right, correct?

8 A. Yes.

9 Q. I'm going to write back of the van.

10 THE COURT: Approximation.

11 Q. Okay. One of the things if counsel asked you
12 was -- please resume your seat. One of the things that
13 counsel asked you was applying the brakes did you slam
14 on your brakes. Did you apply them carefully and
15 slowly? How did you do it?

16 A. I slammed my brakes.

17 Q. You slammed on your brakes?

18 A. Yes.

19 Q. Of course you don't know exactly how much
20 time went by but counsel said you had to react and
21 apply the brakes, right?

22 A. Yes.

23 Q. We know at some point in time you're applying
24 the brakes and the van comes to a stop, right?

25 A. Yes.

26 Q. It didn't come to an instantaneous stop?

1 Brooms-Plaintiff-Redirect

2 A. I don't know.

3 Q. It glided forward. Glided westbound before
4 coming to a stop, right?

5 A. I would head west, yes.

6 Q. Now, one of the things that counsel said was
7 assume that the plaintiff testified that she was and
8 she actually showed you with an X if we said assume
9 that she was approximately three quarters of the way
10 across and you cut this turn short without stopping
11 over here, you would still be making a turn, wouldn't
12 you?

13 MS. DICOLA: Objection to the form of
14 the question.

15 THE COURT: Sustained.

16 Q. Sir, one of the things counsel asked you was
17 to assume certain facts, remember that?

18 A. Yes.

19 Q. She said assume that the plaintiff testified
20 that this is where she was. I'm saying assume that she
21 testified in this vicinity more than three quarters of
22 the way across.

23 MS. DICOLA: Objection.

24 Q. I want you to assume that she's testifying
25 that it was more than three quarters of the way across
26 in this vicinity.

1 Brooms-Plaintiff-Redirect

2 MS. DICOLA: Objection.

3 THE COURT: Overruled. This is being
4 admitted subject to.

5 Q. In the event you're making the turn --

6 MS. DICOLA: May I have a moment to look
7 at the testimony.

8 MR. RUBINOWITZ: Take a look at your
9 50H. Take a look at the deposition. I want you
10 to assume.

11 MS. DICOLA: I need a moment.

12 THE COURT: You gave her a moment.

13 MS. DICOLA: May we approach.

14 THE COURT: Yes.

15 (Whereupon, there is an off the record
16 discussion held at the bench)

17 THE COURT: Why don't we go inside.

18 (In the back)

19 THE COURT: By the way, thank you all
20 for your continued patience with the side bars.
21 It's unavoidable. I'll tell you we've had fewer
22 side bars in this trial than the majority of the
23 trials. Hopefully it will continue that way.

24 Q. Sir, I want you to assume that the area where
25 the X is a bit in front of it is the area assume that's
26 the area that the plaintiff said she had already

1 Brooms-Plaintiff-Redirect

2 crossed all the way across.

3 In the event you made a turn and you're
4 looking you're angled and you're actually looking,
5 assume you didn't stop for just a moment but you almost
6 made a turn, where are you looking? What angle are you
7 looking at?

8 Are you looking to the right straight ahead? Are
9 you looking at the Starbucks coffee? Which way are you
10 looking?

11 A. Between that van and the sign right there?
12 Towards this sign and Starbucks coffee.

13 Q. And is this van the gray van on the north
14 side of the street?

15 A. As I'm cutting in, yes. I was cutting in
16 there.

17 Q. In the event a pedestrian is over here your
18 eyes would be focused on the van and on the Starbucks
19 sign, correct, in that area?

20 A. The direction would be in that vicinity, yes.

21 Q. So when you drew on the third MV 104 that you
22 wrote and we take a look at this and there is a P that
23 you put down -- you see the P. How far would you say
24 across the intersection that P is?

25 A. The third MV 104?

26 Q. Yes, how far is that P across? Would you say

1 Brooms-Plaintiff-Redirect

2 it's a little more than three quarters of the way
3 across from what you drew?

4 A. Yes.

5 Q. Yes?

6 A. The P, yes.

7 Q. Yes, right.

8 Now, you're saying that you were actually
9 stopped here for 10 seconds or more?

10 A. Yes.

11 Q. Just waiting there, right?

12 A. Yes.

13 (Continued on the next page)

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Redirect-Brooms-Rubinowitz

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2 Q. So, all pedestrians, any pedestrian coming by
3 would see you to their left if they are crossing from the
4 north to south, right?

5 A. Yes.

6 Q. Yes, crossing from the north to the south?

7 A. Yes.

8 Q. How wide were these vans?

9 A. I don't know, sir.

10 Q. The construction vans, the two vans that were
11 by the metal grates, how wide were they?

12 A. I don't know, sir.

13 Q. How long were they?

14 A. I don't know.

15 Q. Counsel asked you questions about the reports
16 that you filled out, and you said in the Department of
17 Transportation a police report was included. Does that
18 mean to you, sir, that you don't have to be honest in the
19 reports that you fill out?

20 A. Excuse me?

21 Q. Yeah. When you filled out the reports, all
22 of the reports that you filled out, when you filled out
23 this report on the very day of the accident (indicating)
24 and you stated facts -- Withdrawn -- you stated substance
25 that you never saw, was there a reason you did that
26 because the police report may have been submitted to the

1 Redirect-Brooms-Rubinowitz

2 Department of Transportation?

3 A. I don't understand the question.

4 Q. In fact, wouldn't you agree with me,
5 regardless of whether anybody else has the police report,
6 you are duty bound to fill out that report that you wrote
7 on the day of the accident fairly, fully and honestly,
8 right?

9 A. I thought I did.

10 Q. That's fairly, fully and honest, that's your
11 testimony before our jury, correct?

12 MS. DICOLA: Objection.

13 THE COURT: Sustained.

14 Q. When you say you were stopped over here
15 (pointing), towards the middle of the crosswalk, did you
16 see any vehicles going by you on your right?

17 A. I --

18 MS. DICOLA: Objection. Outside the scope.

19 THE COURT: What was the question?

20 Q. When you were stopped over here, were you
21 looking at vehicles to your right? Were you looking?22 A. Yes, I was looking. I was looking at the
23 crosswalk. I wasn't looking at the side.24 Q. So, you were looking. Were you looking this
25 way, towards the Starbucks? Were you looking at the whole
26 thing, scanning back and forth?

Redirect-Brooms-Rubinowitz

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A. Yes.

Q. Looking at everything all at once?

A. I was looking in the crosswalk, scanning back and forth.

Q. The truth of the matter is at no point in time while you were there did you ever once see Ms. Park, correct?

A. Correct.

Q. What color were those vans?

A. I'm not sure, sir.

Q. Did it have any writing on them?

A. Not sure.

Q. Did they take up more than 30 feet of the -- this side of the road, the south side of the road?

A. It was two vans. I don't know the length.

Q. Were they bigger than your van?

A. Yes.

Q. Counsel asked you these questions about measuring things. You understand I'm asking you approximations as to where your vehicle was. So when you told us your van was stopped about a van length, west of the western most crosswalk line, that was an estimate that you gave us as best you could recall, right?

A. Okay.

Q. When counsel asked you about the thump, do

1 Redirect-Brooms-Rubinowitz

2 you know what part of the van caused injury to Ms. Park?
3 Do you know what part of the vehicle that you were driving
4 caused injury to her?

5 A. The only part came in contact with Ms. Parks
6 was the rear, driver's side.

7 Q. Do you know if it was the front left bumper?

8 A. Didn't come into contact. No impact.

9 Q. You didn't see her, did you?

10 A. No, I didn't.

11 Q. Would you agree with me, sir, in the event
12 the front left bumper hit her and knocked her down, then
13 you would go over her?

14 A. I didn't have any contact with the front, so
15 no.

16 Q. You never saw any contact of any kind, right?

17 A. No.

18 Q. Did anyone tell you, by the way, if the
19 Department of Transportation has other reports from the
20 New York City Police Department, you don't have to
21 complete the report honestly? Did anyone say that to you?

22 A. Repeat the question.

23 Q. Sure. Did anyone from the Department of
24 Transportation ever once tell you they have a report from
25 the police department, you don't have to fill out your
26 report honestly?

1 Recross-Brooms-Dicola

2 A. No.

3 Q. You didn't even know at the time that you
4 filled out this document (indicating), whether or not
5 there were other reports being generated in connection
6 with this accident, correct?7 A. I'm not understanding. There is five
8 documents, five paperworks that comes in each package.9 Q. This document, sir, was yours and yours alone
10 to fill out, right?

11 A. Correct.

12 Q. Nowhere in any document that you filled out
13 with the Department of Transportation did you write down,
14 I never saw her, know where she came from, true?

15 A. True.

16 MR. RUBINOWITZ: Nothing further.

17 THE COURT: Recross examination.

18 RECROSS EXAMINATION

19 BY MS. DICOLA:

20 Q. Mr. Brooms, could you just step down for a
21 moment. It's a little bit of a clearer copy of the second
22 MV-104.

23 A. Okay.

24 Q. Looking at your diagram, could you -- you see
25 where there is a box with the number one?

26 A. Yes.

Recross-Brooms-Dicola

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Q. Could you point to it, please?

A. (Indicating).

Q. What does that refer to?

A. The van.

Q. Do you see where the P is?

A. Yes.

Q. Do you see where there is a dot?

A. Yes.

Q. Do you see where there is a line?

A. Yes.

Q. What is the significance of the dot, the line and the P?

A. This dot right here, was -- this is the pedestrian. This must be impact. This P with arrows, pointing where the pedestrian was. There is no number for pedestrians.

Q. Very good. You can take a seat. Thank you. A moment ago counsel asked you a question about if Ms. Park made contact with the front driver's side bumper of the van and fell and you ran over her. You would agree that there would have been an impact you would have felt, correct?

A. Correct.

MR. RUBINOWITZ: Objection.

Q. How many --

1 Recross-Brooms-Dicola

2 THE COURT: Overruled.

3 MR. RUBINOWITZ: Objection judge.

4 THE COURT: Overruled.

5 Q. How many impacts -- Withdrawn. How many
6 thumps did you feel, one or more than one?

7 A. One.

8 Q. And where was the only thump that you felt on
9 the van?

10 A. The rear driver's side.

11 Q. If Ms. Park had fallen, assume the
12 hypothetical that counsel asked you, if you had hit her
13 with your left front bumper and ran over her with your
14 front driver's side tire, proceeded straight and then came
15 to a stop, how many thumps would you have felt?

16 A. Two.

17 Q. Did you feel two?

18 A. No.

19 MS. DICOLA: Thank you, Mr. Brooms. I have
20 no further questions.

21 MR. RUBINOWITZ: Mr. Brooms, in the event
22 you were angled and the front of your car went over
23 her with the front left tire, there would only be one
24 thump, true?

25 THE WITNESS: Yes.

26 MR. RUBINOWITZ: Nothing further.

PROCEEDINGS

1
2 THE COURT: Okay. You could step down.
3 Monday.

4 MS. DICOLA: Yes, your Honor.

5 THE COURT: Okay. So, folks, we're going to
6 be seeing you back here Monday at 10:00 a.m.

7 MS. DICOLA: No.

8 MR. ORCUTT: Afternoon.

9 THE COURT: That's right. That's right.
10 Monday at 2 o'clock, okay. I don't want you to --
11 One of the things is, it's probably going to, what I
12 have on, could end a little bit early. But I prefer
13 to give you the extra time to make sure when you come
14 here, we're going to get going as opposed to running
15 the risk that I ask you to come in at say 12 o'clock,
16 and I'm still going on with what I have to do in the
17 morning, and then you've essentially waited around
18 for the hour and then the lunch period. I think you
19 can spend your time more valuable doing the things
20 you would like to do and just come exactly when it
21 is. But in order to get that witness done, we might
22 have to go to 5 o'clock, okay.

23 What I'm trying to do is get witnesses done.
24 So, sometimes that means ending, we can leave at
25 4:30, sometimes a little bit later. We're going to
26 try to make things make sense for you folks.

PROCEEDINGS

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2 I thank counsel, because they have been
3 working with the judge to make sure your time is
4 maximized, okay, so that you're not here any more
5 than you need to be.

6 Now there is a nice block of time that you're
7 going to be down. So I want to reiterate myself to
8 you again about not doing anything outside this
9 courtroom relating to this case. No research.
10 Please try and stay away from the area, okay. I know
11 it's, you know, it's midtown Manhattan. So, please
12 stay away, if it's at all possible, okay. We don't
13 want you again looking at something that might very
14 well be different today than it was several years
15 ago, okay. So you could all do that?

16 THE JURY: Yes.

17 THE COURT: Also, remember, don't talk to
18 people about the case. Okay. You will have plenty
19 of time to talk about how, you know, you were a juror
20 on a case, okay, and what the experience was like to
21 each of you, okay. But please, for everybody's sake,
22 okay, keep it to yourself until this case is
23 completely over. Okay. Thank you. You're dismissed
24 until Monday. Yes.

25 THE JUROR: In the interim do we return to
26 work?

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PROCEEDINGS

THE COURT: Yes. You can do anything you want.

THE JUROR: So, it won't be documented that we were on jury duty those days, so we should return?

THE COURT: Off the record.

(Whereupon there was a discussion off the record.)

COURT OFFICER: All rise. Jury exiting.

(Whereupon the jury panel departed the courtroom.)

(Whereupon the proceedings were adjourned to Monday, November 7, 2016 at 2:00 p.m.)

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